

APPENDIX A

Selected Passages from the Florida Statutes, Florida Administrative Code and Other MFL-Related Correspondence

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SELECTED PASSAGES FROM CHAPTER 373, FLORIDA STATUTES

Source: <http://www.flsenate.gov/> on May 12, 2005

373.042 Minimum flows and levels.--

(1) Within each section, or the water management district as a whole, the department or the governing board shall establish the following:

(a) Minimum flow for all surface watercourses in the area. The minimum flow for a given watercourse shall be the limit at which further withdrawals would be significantly harmful to the water resources or ecology of the area.

(b) Minimum water level. The minimum water level shall be the level of groundwater in an aquifer and the level of surface water at which further withdrawals would be significantly harmful to the water resources of the area.

The minimum flow and minimum water level shall be calculated by the department and the governing board using the best information available. When appropriate, minimum flows and levels may be calculated to reflect seasonal variations. The department and the governing board shall also consider, and at their discretion may provide for, the protection of nonconsumptive uses in the establishment of minimum flows and levels.

(2) By November 15, 1997, and annually thereafter, each water management district shall submit to the department for review and approval a priority list and schedule for the establishment of minimum flows and levels for surface watercourses, aquifers, and surface waters within the district. The priority list shall also identify those water bodies for which the district will voluntarily undertake independent scientific peer review. By January 1, 1998, and annually thereafter, each water management district shall publish its approved priority list and schedule in the Florida Administrative Weekly. The priority list shall be based upon the importance of the waters to the state or region and the existence of or potential for significant harm to the water resources or ecology of the state or region, and shall include those waters which are experiencing or may reasonably be expected to experience adverse impacts. By January 1, 2003, each water management district's priority list and schedule shall include all first magnitude springs, and all second magnitude springs within state or federally owned lands purchased for conservation purposes. The specific schedule for establishment of spring minimum flows and levels shall be commensurate with the existing or potential threat to spring flow from consumptive uses. Springs within the Suwannee River Water Management District, or second magnitude springs in other areas of the state, need not be included on the priority list if the water management district submits a report to the Department of Environmental Protection demonstrating that adverse impacts are not now occurring nor are reasonably expected to occur from consumptive uses during the next 20 years. The priority list and schedule shall not be subject to any proceeding pursuant to chapter 120. Except as provided in subsection (3), the development of a priority list and compliance with the schedule for the establishment of minimum flows and levels pursuant to this subsection shall satisfy the requirements of subsection (1).

373.0421 Establishment and implementation of minimum flows and levels.--

(1) ESTABLISHMENT.--

(a) *Considerations.*--When establishing minimum flows and levels pursuant to s. [373.042](#), the department or governing board shall consider changes and structural alterations to watersheds, surface waters, and aquifers and the effects such changes or alterations have had, and the constraints such changes or alterations have placed, on the hydrology of an affected watershed, surface water, or aquifer, provided that nothing in this paragraph shall allow significant harm as provided by s. [373.042](#)(1) caused by withdrawals.

(b) *Exclusions.*--

1. The Legislature recognizes that certain water bodies no longer serve their historical hydrologic functions. The Legislature also recognizes that recovery of these water bodies to historical hydrologic conditions may not be economically or technically feasible, and that such recovery effort could cause adverse environmental or hydrologic impacts. Accordingly, the department or governing board may determine that setting a minimum flow or level for such a water body based on its historical condition is not appropriate.

2. The department or the governing board is not required to establish minimum flows or levels pursuant to s. [373.042](#) for surface water bodies less than 25 acres in area, unless the water body or bodies, individually or cumulatively, have significant economic, environmental, or hydrologic value.

3. The department or the governing board shall not set minimum flows or levels pursuant to s. [373.042](#) for surface water bodies constructed prior to the requirement for a permit, or pursuant to an exemption, a permit, or a reclamation plan which regulates the size, depth, or function of the surface water body under the provisions of this chapter, chapter 378, or chapter 403, unless the constructed surface water body is of significant hydrologic value or is an essential element of the water resources of the area.

The exclusions of this paragraph shall not apply to the Everglades Protection Area, as defined in s. [373.4592](#)(2)(i).

(2) If the existing flow or level in a water body is below, or is projected to fall within 20 years below, the applicable minimum flow or level established pursuant to s. [373.042](#), the department or governing board, as part of the regional water supply plan described in s. [373.0361](#), shall expeditiously implement a recovery or prevention strategy, which includes the development of additional water supplies and other actions, consistent with the authority granted by this chapter, to:

(a) Achieve recovery to the established minimum flow or level as soon as practicable; or

(b) Prevent the existing flow or level from falling below the established minimum flow or level.

The recovery or prevention strategy shall include phasing or a timetable which will allow for the provision of sufficient water supplies for all existing and projected reasonable-beneficial uses, including development of additional water supplies and implementation of conservation and other efficiency measures concurrent with, to the extent practical, and to offset, reductions in permitted withdrawals, consistent with the provisions of this chapter.

(3) The provisions of this section are supplemental to any other specific requirements or authority provided by law. Minimum flows and levels shall be reevaluated periodically and revised as needed.

SELECTED PASSAGES FROM THE FLORIDA ADMINISTRATIVE CODE

Source: <http://election.dos.state.fl.us/fac/index.shtml> on May 12, 2005

40E-8.021 Definitions.

The terms set forth herein shall have the meanings ascribed to them, unless the context clearly indicates otherwise, and such meanings shall apply throughout the rules contained in this chapter. The terms defined in Rule 40E-8.021, F.A.C., shall apply throughout the District's consumptive use permit rules. In the event of a conflict or difference between the definitions contained in Rule 40E-8.021, F.A.C., and the definitions set forth in other District rules, the definitions in this Rule 40E-8.021, F.A.C., shall control for purposes of this chapter.

(1) Biscayne Aquifer – means the highly permeable surficial strata (hydraulic conductivities generally greater than 500 ft/day) that occur within Monroe, Miami-Dade (excluding those portions of coastal Monroe and Miami-Dade counties that discharge groundwater into Florida and Biscayne Bays), eastern Broward, and portions of eastern Palm Beach counties.

(2) Caloosahatchee River – means the surface waters that flow through the S-79 structure, combined with tributary contributions below S-79 that collectively flow southwest to San Carlos Bay.

(3) C&SF Project – means the project for Central and Southern Florida authorized under the heading 'CENTRAL AND SOUTHERN FLORIDA' in section 203 of the Flood Control Act of 1948 (Chapter 771).

(4) CERP – means the Comprehensive Everglades Restoration Plan contained in the 'Final Integrated Feasibility Report and Programmatic Environmental Impact Statement', dated April 1, 1999, as modified by the Water Resources Development Act of 2000.

(5) Certification or Certify – means the formal determination by the District, through a validation process consistent with state and federal law, of the total amount of water made available by a project or project phase of a recovery or prevention strategy, as appropriate, for natural systems and other uses.

(6) Direct Withdrawal means:

(a) A ground water withdrawal that causes a water table drawdown greater than 0.1 feet, as determined using a model accepted by the District, at any location beneath the MFL surface water body or aquifer, up through a 1 in 10 year drought; or

(b) A surface water withdrawal from facilities physically located within the boundaries of a MFL surface water body.

(7) Everglades – means the lands and waters included within Water Conservation Areas, the Holeyland/Rotenberger wildlife management areas, and the freshwater portions of the Everglades National Park.

(8) Harm – means the temporary loss of water resource functions, as defined for consumptive use permitting in Chapter 40E-2, F.A.C., that results from a change in surface or ground water hydrology and takes a period of one to two years of average rainfall conditions to recover.

(9) Indirect Withdrawal – means the withdrawal of water from a water source for a consumptive use that receives surface water or ground water from a MFL water body or is tributary to a MFL water body.

(10) Lake Okeechobee – means the lands and waters contained within the perimeter of the Hoover Dike.

(11) LEC Plan – means the Lower East Coast Regional Water Supply Plan – May 2000, including all three volumes.

(12) Lower West Coast Aquifers – means the lower Tamiami aquifer, sandstone aquifer and the mid-Hawthorn aquifer that occur within Charlotte, Hendry, Glades, Lee and Collier counties.

(13) LWC Plan – means the Lower West Coast Regional Water Supply Plan – April 2000, including all three volumes.

(14) Minimum Flow – means a flow established by the District pursuant to Sections 373.042 and 373.0421, F.S., for a given water body and set forth in Parts II and III of this chapter, at which further withdrawals would be significantly harmful to the water resources or ecology of the area.

(15) Minimum Flow and Level Exceedance – means to fall below a minimum flow or level, which is

established in Parts II and III of this chapter, for a duration greater than specified for the MFL water body.

(16) Minimum Flow and Level Violation – means to fall below a minimum flow or minimum level, which is established in Parts II and III of this chapter, for a duration and frequency greater than specified for the MFL water body. Unless otherwise specified herein, in determining the frequency with which water flows and levels fall below an established MFL for purposes of determining a MFL violation, a “year” means 365 days from the last day of the previous MFL exceedance.

(17) Minimum Level – means the level of groundwater in an aquifer or the level of surface water established by the District pursuant to Sections 373.042 and 373.0421, F.S., in Parts II and III of this chapter, at which further withdrawals would be significantly harmful to the water resources of the area.

(18) MFL Water Body – means any surface water, watercourse, or aquifer for which an MFL is established in Part II or III of this chapter.

(19) Northwest Fork of the Loxahatchee River: Means those areas defined below:

(a) Northwest Fork of the Loxahatchee River that has been federally designated as Wild, Scenic and Recreational uses (as defined in the Loxahatchee River Wild and Scenic River Management Plan 2000) (see Map 1, incorporated herein), including the river channel that extends from river mile 6.0 (latitude 26.9856, longitude 80.1426) located near the eastern edge of Jonathan Dickinson State Park and continues upstream to the G-92 structure (latitude 26.91014, longitude 80.17578), including the C-14 Canal. The river channel includes the physical water flow courses and adjacent floodplain up to the limits of the floodplain swamp and wetlands within Riverbend Park, as determined by state wetland delineation criteria;

(b) Cypress Creek which extends westward from river mile 10.6 to the intersection of Gulf Stream Citrus Road (latitude 26.96484, longitude 80.1855) located approximately one mile west of the Florida Turnpike and includes its natural river channels and contiguous floodplain as determined by state wetland delineation criteria;

(c) Kitching Creek which extends from river mile 8.1 (latitude 26.9908, longitude 80.1540) northward through Jonathan Dickinson State Park to north of Bridge Road (latitude 27.05513, longitude 80.17580), including its natural river channels and contiguous floodplain as determined by state wetland delineation criteria; and

(d) Hobe Grove Ditch which extends west from river mile 9.1 (latitude 26.9854, longitude 80.1594) westward to the Hobe-St. Lucie Conservancy District pump station outfall (latitude 26.5908, longitude 80.1031) including its natural river channels and contiguous floodplain as determined by state wetland delineation criteria.

(20) Operations – means activities taken by the District for the movement of surface water through works of the District pursuant to Chapter 373, F.S.

(21) Prevention Strategy(ies) – means the structural and non-structural actions approved by the District in regional water supply plans, pursuant to Section 373.0421, F.S., or by rule, for areas where MFLs are currently not violated, but are projected to be violated within twenty (20) years of the establishment of the minimum flow or level, if said prevention strategies are not implemented.

(22) Recovery Strategy(ies) – means the structural and non-structural actions approved by the District in regional water supply plans, pursuant to Section 373.0421, F.S., or by rule, for areas where MFLs are currently violated.

(23) Regional Water Supply Plan – means a plan approved by the District pursuant to Section 373.0361, F.S.

(24) St. Lucie River North Fork – means the surface waters that extend from the Gordy Road Bridge structure (state plane coordinates, x851212.831, y1116105.7470), combined with tributary contributions below Gordy Road and collectively flow south to the confluence with the C-24 canal (state plane coordinates, x873,712.20, y1064,390.41).

(25) St. Lucie River South Fork – means the surface waters that extend from the culverts located at state plane coordinates x902,512.67, y1,001,799.91, north to the confluence of the river and the St. Lucie Canal (C-44).

(26) St. Lucie Estuary – means the surface water body south of the confluence of the St. Lucie River North Fork and C-24, north of the confluence of the St. Lucie River South Fork and C-44, and west of the western boundary of the Intracoastal Waterway, exclusive of canals.

(27) Serious Harm – means the long-term loss of water resource functions, as addressed in Chapters 40E-21 and 40E-22, F.A.C., resulting from a change in surface or ground water hydrology.

(28) Significant Harm – means the temporary loss of water resource functions, which result from a change in surface or ground water hydrology, that takes more than two years to recover, but which is

considered less severe than serious harm. The specific water resource functions addressed by a MFL and the duration of the recovery period associated with significant harm are defined for each priority water body based on the MFL technical support document.

Specific Authority §§ 9, 10 P.L. 83-358, 373.044, 373.113, 373.119, 373.129, 373.136, 373.171 F.S. Law Implemented 373.016, 373.036, 373.0361, 373.042, 373.0421, 373.175, 373.216, 373.219, 373.223, 373.246 F.S. History–New 9-10-01, Amended 11-11-02, 4-1-03.

40E-8.421 Prevention and Recovery Strategies.

(1) At the time of adoption of this rule, the existing flow or level for certain specified water bodies is below, or within 20 years is projected to fall below, the applicable MFL. For this reason, Section 373.0361, F.S., requires regional water supply plans to contain recovery and prevention strategies, including water resource development and water supply development projects that are needed to achieve compliance with MFLs during the planning period. The implementation of such projects will allow for the orderly replacement or enhancement of existing water sources with alternative supplies in order to provide sufficient water for all existing and projected reasonable-beneficial uses, consistent with Section 373.0421, F.S.

(a) MFLs and recovery and prevention strategies will be implemented in phases with consideration of the District's missions in managing water resources, including water supply, flood protection, environmental enhancement and water quality protection, as required by Section 373.016, F.S.

(b) MFLs are implemented to prevent significant harm to the water resources and, where applicable, the ecology of the area due to further withdrawals (Sections 373.042 and 373.0421, F.S.). A consumptive use permitting program is implemented to prevent harm to the water resource (Section 373.219, F.S.). A water shortage program is implemented to prevent serious harm to the water resource (Sections 373.175 and 373.246, F.S.). Additionally, the protection of water resources will, in part, be achieved through the reservation of water for fish and wildlife or public health and safety (Section 373.223(4), F.S.). The conceptual model identifying the relationships between these water resource protection requirements is set forth in Figure I in this Part.

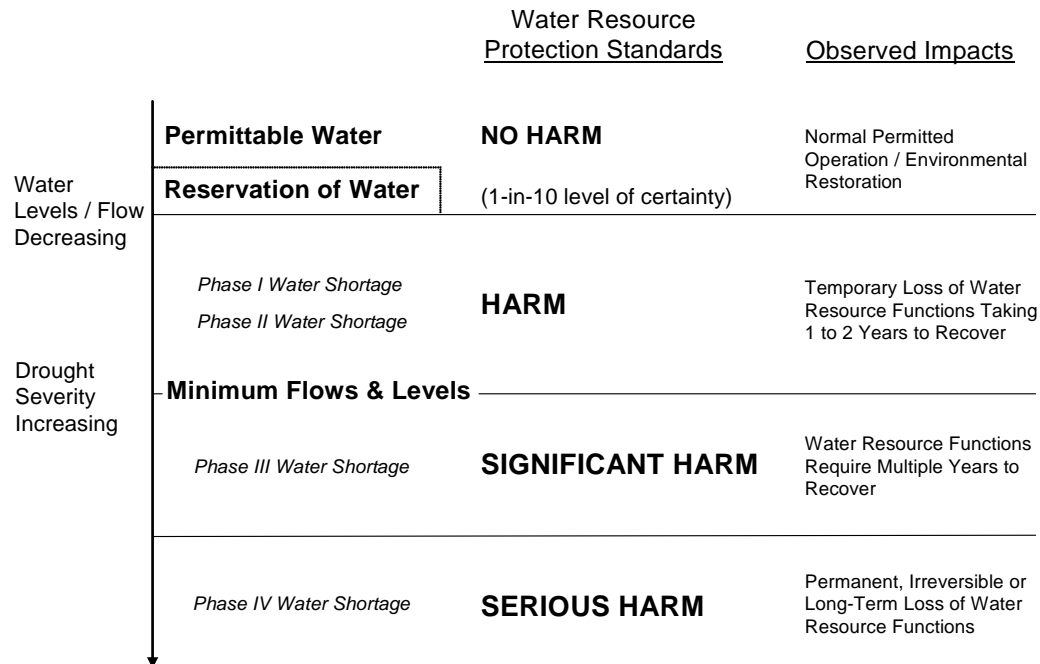
(c) The rules implementing water resource protection tools, including Chapters 40E-2, 40E-8, 40E-20, 40E-21, and 40E-22, F.A.C., identify the specific factors and conditions that will be applied and considered in implementing the conceptual model. Due to the extreme variations in water resource conditions, climatic conditions, hydrologic conditions, and economic considerations that will be faced when implementing these rules, it is critical to apply such criteria flexibly and to reserve for the governing board the ability to implement water resource protection and allocation programs considering all of the District's missions under Chapter 373, F.S., and to balance water supply, flood protection, resource protection and water quality protection needs. Implementation of the recovery and prevention strategies will be achieved in compliance with the assurances to consumptive users and to natural systems contained in the LEC Plan and the LWC Plan.

(d) The phasing and timetables for implementation of structural components in recovery and prevention strategies contained in approved regional water supply plans are found to meet the requirements in Section 373.0421(2), F.S., for the expeditious and practicable recovery of the MFLs.

(e) Upon completion of each project or project phase of a recovery or prevention plan the District will certify the availability of water, as defined in subsection 40E-8.021(5), F.A.C.

(f) In order to ensure that the actual and projected performance of prevention and recovery strategies approved in the regional waters supply plans is sufficient to meet water resource needs, including MFLs, and the existing and projected reasonable-beneficial uses, the District will update recovery and prevention strategies on a periodic basis, based on new information and system performance. The performance of the recovery and prevention strategies in comparison to the performance projected in the regional water supply plans, will be assessed by the District for each recovery or prevention strategy phase. Based on the actual performance and new information obtained regarding the water resources, the District will review and revise, if necessary, recovery and prevention strategies through the regional water supply plan update process every five years, or sooner, as required by Section 373.0361, F.S. At that time, the governing board will determine if rule modifications to the MFL or recovery and prevention strategies are necessary to continue to meet the requirements of Sections 373.042 and 373.0421, F.S.

Figure 1: Conceptual Relationship Among the Harm, Serious Harm and Significant Harm Standards



(2) The Everglades and the Caloosahatchee River.

(a) As the effective date of this rule, September 10, 2001, the Everglades and Caloosahatchee River have experienced MFL violations. As a result, the LEC Plan and the LWC Plan contain approved recovery strategies, pursuant to Section 373.0421, F.S. Included in these recovery and prevention strategies is the CERP.

(b) MFLs for many areas within the Everglades and the Caloosahatchee River, served by the C&SF Project, will not be achieved immediately upon adoption of this rule largely because of the lack of adequate regional storage or ineffective water drainage and distribution infrastructure. Although not all locations within the Everglades are currently in violation of the proposed MFL, the Everglades, as a whole, is subject to a recovery strategy. The LEC Plan identifies the structural and non-structural remedies necessary for the recovery of MFL water bodies. These structural and non-structural remedies are also intended to restore the Everglades and the Caloosahatchee River above the MFLs, through Chapter 373, F.S., authorities of the District. The projected long-term restoration of flows and levels in the Everglades resulting from implementation of the LEC Plan and the CERP is documented in the LEC Plan, and are intended to more closely approximate “pre-drainage” conditions. The planned components include implementing consumptive use and water shortage programs, removing conveyance limitations, implementing revised C&SF Project operational programs, storing additional freshwater, reserving water for the protection of fish and wildlife, and developing alternative sources for water supply. These components will be implemented over the next 20 years, resulting in a phased restoration of the affected areas.

(c) The District, as the U.S. Army Corps of Engineers’ local sponsor of the C&SF Project, is charged with implementing the CERP, in accordance with the Water Resources Development Act of 2000 (WRDA), Title VI entitled “Comprehensive Everglades Restoration,” and in accordance with State law. Assurances regarding water availability for consumptive uses and protection of natural systems are set forth in WRDA, Chapter 373, F.S., CERP and the LEC Plan, which will be followed by the District in implementing this chapter. Additional quantities of water for both consumptive uses and the natural systems made available from the CERP and other water resource development projects will be documented and protected on a project basis. For project components implemented under CERP, the additional quantity, distribution and timing of delivery of water that is made available for the natural system for consumptive use, will be identified consistent with purposes of the CERP. Under State law, water reservations and water allocations to consumptive uses will be utilized to protect water availability for the intended purposes.

(3) Lake Okeechobee. The LEC Plan contains an approved prevention strategy for Lake Okeechobee pursuant to Section 373.0421, F.S. The prevention strategy consists of implementing the District's water shortage plan, including supply side management, as simulated in the LEC Plan, and constructing and operating water supply and resource development projects.

(4) Biscayne Aquifer. The LEC Plan contains an approved prevention strategy for the Biscayne Aquifer pursuant to Section 373.0421, F.S., which consists of the following:

- (a) Maintain coastal canal stages at the minimum operation levels shown in Table J-2 of the LEC Plan;
- (b) Apply conditions for permit issuance in Chapter 40E-2 or 40E-20, F.A.C., to prevent the harmful movement of saltwater intrusion up to a 1-in-10 year level of certainty;
- (c) Maintain a ground water monitoring network and utilize data to initiate water shortage actions pursuant to Rule 40E-8.441, F.A.C. and Chapters 40E-21 and 40E-22, F.A.C.;
- (d) Construct and operate water resource and water supply development projects; and
- (e) Conduct research in high risk areas to identify where the portions of the saltwater front is adjacent to existing and future potable water sources.

(5) Lower West Coast Aquifers. The LWC Plan identifies a prevention strategy for the LWC Aquifers, pursuant to Section 373.0421, F.S., as follows:

- (a) Establish "no harm" maximum permittable levels for each aquifer (regulatory levels) for a 1-in-10 year level of certainty;
- (b) Implement rule criteria to prevent harm through the consumptive use permitting process, including conditions for permit issuance in Rule 40E-2.301, F.A.C.;
- (c) Construct and operate water resource and supply development projects; and
- (d) Implement the water shortage plan in Chapter 40E-21, F.A.C., as needed to prevent serious harm during drought conditions in excess of a 1-in-10 year level of certainty.

(6) St. Lucie River and Estuary. The following is the prevention strategy for the St. Lucie River and Estuary:

(a) Discharges from the North Fork will be managed within the operational protocols of the Ten Mile Creek Project scheduled to be completed by 2004. Flow targets will be consistent with the CERP performance requirements for Indian River Lagoon.

(b) A research and monitoring strategy for the North and South Forks of the St. Lucie River will be developed and implemented in coordination with the Upper East Coast Regional Water Supply Plan update.

(7) Northwest Fork of the Loxahatchee River Recovery Strategy: Purpose and Intent.

(a) The Northwest Fork of the Loxahatchee River is currently not meeting the MFL and requires implementation of a recovery strategy to achieve the MFL as soon as practicable, consistent with Section 373.0421, F.S. The recovery strategy consists of projects contained within the following approved plans: the Lower East Coast Regional Water Supply Plan (LEC Plan), the Comprehensive Everglades Restoration Plan (CERP), and the Northern Palm Beach County Comprehensive Water Management Plan (NPBCCWMP). Four phases of recovery are identified in the Technical Documentation to Support Development of Minimum Flows and Levels for the Northwest Fork of the Loxahatchee River, November 2002, which are projected to increase flows to meet the MFL for the Northwest Fork of the Loxahatchee River. As part of the recovery strategy, as provided in this rule, the consumptive use permitting and water shortage requirements in this Chapter and Chapters 40E-2 and 40E-21, F.A.C., shall apply to consumptive use direct and indirect withdrawals from surface and groundwater sources from the Northwest Fork of the Loxahatchee River and those areas directly tributary to the Northwest Fork.

(b) In addition to implementation of this MFL recovery strategy, the District commits to restore freshwater flows to the Northwest Fork of the Loxahatchee River above the MFL through Chapter 373, F.S., and the Comprehensive Everglades Restoration Plan and its associated authorities. The District will continue to partner with the Florida Department of Environmental Protection in establishing a practical restoration goal and plan for the Loxahatchee River watershed. Recognizing that natural seasonal fluctuations in water flows are necessary to ensure that the functions of the Loxahatchee River are protected, this restoration goal and plan will include a more complete set of seasonally managed flow criteria for the river that are driven primarily by natural rainfall and runoff patterns within the watershed.

(c) The District shall continue to operate the G-92 structure and associated structures to provide approximately 50 cfs or more over Lainhart Dam to the Northwest Fork of the Loxahatchee River, when the District determines that water supplies are available.

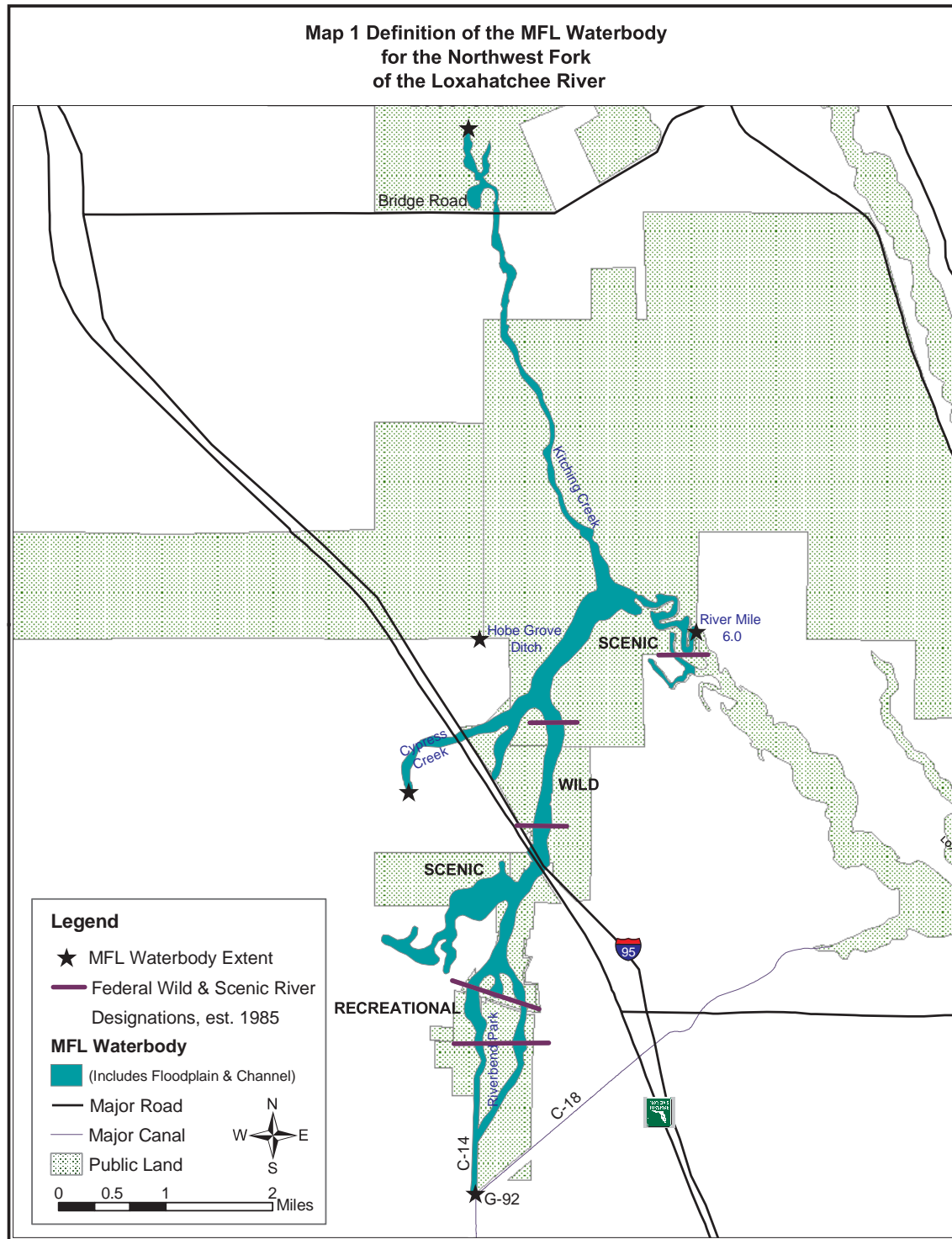
(d) Additionally, it is the intent of the District to continue the current operational protocols of the G-92 structure so as not to reduce the historical high, average and low flows as estimated over the 30 year period

of rainfall record used as the basis for the MFL for the Northwest Fork of the Loxahatchee River.

(e) It is the District's intent to implement, along with other partners, projects to meet the practical restoration goal developed according to paragraph (b). Projects contained in the Comprehensive Everglades Restoration Plan, the LEC Plan and the NPBCCWMP will provide increased storage and conveyance within the basin with a goal of providing more water for restoration of the Northwest Fork of the Loxahatchee River.

(f) To protect water made available for the recovery and restoration of the Loxahatchee River through implementation of these associated projects, the District intends to adopt water reservations for the Loxahatchee River, pursuant to Section 373.223(4), F.S., on a project by project basis over the next 20 years. In addition, the SFWMD intends to adopt an initial reservation to protect existing water used for protection of fish and wildlife, consistent with the practical restoration goal identified for the Loxahatchee River, by 2004. Future reservations related to the Loxahatchee River will be consistent with the reservations being developed for restoration of the Everglades under CERP, and will reflect the needs of the natural system through a range of hydrologic conditions. These water reservations are intended to prevent the future allocation to consumptive uses the freshwater intended for restoration of the Loxahatchee River. The reservations will be implemented through the consumptive use permit program, operational protocols, water shortage rules, and other appropriate provisions in Chapter 373, F.S.

(g) As reservations are adopted to restore the Loxahatchee River beyond that to be achieved by the MFL, the District shall revise the minimum flow and level and associated prevention and recovery strategy, as appropriate, under Sections 373.042 and 373.0421, F.S., to be consistent with the reservation.



Specific Authority §§ 9, 10 P.L. 83-358, 373.044, 373.113, 373.171 FS. Law Implemented 373.016, 373.036, 373.0361, 373.042, 373.0421, 373.175, 373.216, 373.219, 373.223, 373.246 FS. History–New 9-10-01, Amended 11-11-02, 4-1-03.

MFL WATER BODY - LETTER FROM SFWMD TO FDEP



SOUTH FLORIDA WATER MANAGEMENT DISTRICT

3301 Gun Club Road, West Palm Beach, Florida 33406 • (561) 686-8800 • FL WATS 1-800-432-2045 • TDD (561) 697-2574
 Mailing Address: P.O. Box 24680, West Palm Beach, FL 33416-4680 • www.sfwmd.gov

Joel VanArman

April 1, 2005

Ms. Colleen Castille
 Secretary, Florida Department of Environmental Protection
 Marjory Stoneman Douglas Building
 3900 Commonwealth Boulevard
 Tallahassee, Florida 32399-3000

Dear Ms. Castille: *Colleen*

In response to Section 373.042(2) Florida Statutes, the South Florida Water Management District (District) submits its revised "2005 Minimum Flows and levels Priority List and Schedule for Establishment" to the Department of Environmental Protection. The District's Governing Board approved the attached list of MFL Priority Water Bodies and Schedule on March 8, 2005.

As has been discussed with the Department's Office of Water Policy, and presented in the attached document, the MFL Priority Water body list has been significantly revised to accommodate the District's new initiative to develop initial water reservations for the Everglades (i.e., the Water Conservation Areas, Everglades National Park and N.E. Florida Bay), the Caloosahatchee and St. Lucie estuaries, the Kissimmee River, northern Biscayne Bay and the N.W. Fork of the Loxahatchee River.

We look forward to the Department's approval of the attached list so that it can be published in the Florida Administrative Weekly. If you have any questions, please contact Carlyn Kowalsky at 561-682-6240.

Sincerely,

Henry Dean
 Executive Director

c: Carlyn Kowalsky

Attachments

GOVERNING BOARD

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EXECUTIVE OFFICE

Henry Dean, Executive Director

South Florida Water Management District
2005 Minimum Flows and Levels Priority List and Schedule for Establishment
4/1/05

<i>Region</i>	<i>Priority Water Body</i>	<i>Year Established</i>
Kissimmee basin	Lake Istokpoga	2005
Lower East Coast	Florida Bay	2005
	Biscayne Bay - South	2006
	Loxahatchee River (Tributaries ¹ to N.W. Fork)	2007

(1) = Tributaries include Kitching Creek, Hobe Grove Ditch, Cypress Creek and Loxahatchee Slough

Basis for Proposed Changes for the April 1, 2005 MFL List

Considerations for Developing the 2005 Priority List

The previous SFWMD Minimum Flows and Levels (MFL) Priority List, and Schedule, dated February 2004, proposed development of 23 MFLs between 2004 and 2008, including 1 MFL in 2004, 6 in 2005, 14 in 2006, 1 in 2007 and 1 in 2008. So far, in the six years since MFL development efforts were initiated by the SFWMD in 1998, the District has completed technical studies and adopted MFL criteria by rule for 7 water bodies. Based on our experience with adoption of these MFLs, we recognize that the large numbers of MFL projects proposed for 2005 and 2006 cannot be completed, given the available resources, modeling, peer review and public involvement processes needed to support these efforts.

The SFWMD is also beginning efforts to develop initial water reservations for critical natural areas within its jurisdiction. The most critical resources are those that are linked to regional water management facilities, are subject to restoration efforts such as CERP and Acceler8 but, prior to completion of these projects are threatened by pending requests for increased consumptive use withdrawals. The water bodies that are most at risk from these perspectives include the Everglades, Northwest Fork of the Loxahatchee River, Caloosahatchee River, northern Biscayne Bay, St. Lucie Estuary and the Kissimmee River.

Whereas the MFL criteria are appropriately used to protect resources that are presently experiencing or likely to experience significant harm, the District perceives that the initial water reservations will provide additional water resource protection for some of these areas. Reservations may also provide a more appropriate basis for restricting consumptive use water allocations than is provided by the MFL, but it will take some time and experience with the use of this tool to determine its effectiveness. Some areas may require development of both MFL criteria and a water reservation to ensure adequate resource protection.

The MFL Priority List for 2005 was therefore revised considerably relative to previous lists, based on the following considerations:

- The workload for development of MFLs (i.e. number of MFL studies that need to be completed) is increasing rapidly in the next few years. However, due to competing, high-priority restoration initiatives, no additional District staff resources are available for this effort.
- The SFWMD is initiating a major effort and a new prioritization process to establish initial water reservations for critical water bodies within its jurisdiction. This effort will require many of the same staff that are presently developing MFLs.
- The 2005 list proposes a more realistic approach to MFL prioritization that will focus efforts to develop MFLs in areas that have the most critical needs and areas where MFL criteria development efforts are actively underway. The scope of the list has therefore been reduced to three years. As the list is updated each year, more water bodies will be added, as areas with the most critical needs are prioritized, associated planning and restoration efforts proceed and MFL or water reservation studies are initiated. Each area will be carefully evaluated to determine which of these tools (MFLs or reservations) can provide the most effective protection of South Florida's water resources
- The policy issues surrounding development of MFLs have become more complex in areas where there is significant competition for available water resources. More emphasis is being placed on protection of resources in these critical areas. In order to focus more resources on these critical areas, water bodies where competition for available water is not an immediate issue were removed from the list
- Some MFL efforts have been delayed to provide better coordination with restoration plans. It has been very difficult in the past to convince the public that the MFL criteria would provide protection for the resource, unless restoration plans and criteria were also provided. Therefore, development of MFLs needs to be closely coordinated with regional restoration (e.g. CERP) and water supply plans and projects. These activities typically constitute the MFL recovery and prevention strategies, and provide assurances to the public and other agencies that the resource will continue to be properly managed, to protect and enhance the condition of the resource in the future, as water supply demands increase over time.
- The District has also identified the need to better coordinate development of MFL criteria for aquifers with the development of MFL criteria for closely related surface water bodies, such as adjacent estuaries.
- The approach proposed for the 2005 list will focus MFL efforts on areas that have the most critical needs and areas where MFL studies are actively underway. As the list is updated each year, more water bodies will be added as ongoing studies are completed, associated planning and restoration efforts proceed, and new MFL or water reservation studies can begin. Each area will be carefully evaluated to determine which of these tools (MFLs or reservations) can provide the most effective protection of regional water resources

Technical and policy considerations for specific water bodies, which were factored into this revised list, are summarized below.

Explanation of Changes from Previous List**Biscayne Bay MFL**

The 2004 MFL Priority List proposed that the SFWMD would develop MFL criteria for three areas of Biscayne Bay – South Central, Northern and Southern. This year we are modifying the scope and timing of these efforts as summarized below

- 1) The South-Central area extends from the vicinity of the C-100 Canal north of Black Point, south to the northern edge of Card Sound, including the coastal section of Biscayne National Park and the Biscayne Bay Coastal Wetlands CERP Project. Although MFL development has been delayed due to technical issues, the District intends to complete this effort during 2006. Management of water levels in the southern Biscayne Aquifer is a critical component of providing minimum levels of freshwater flow to Biscayne Bay during periods of reduced rainfall and will be addressed in this analysis.
- 2) The northern area of Biscayne Bay extends from north of C-100 Canal to Dumbofounding Bay, including the Central, Miami River/Government Cut, Northern and Snake Creek/Oleta River subunits. These areas were identified last year as needing additional evaluation. We have subsequently determined that northern Biscayne Bay can be better protected by establishment of a water reservation, rather than MFL criteria. We are proposing to develop this reservation during 2006.
- 3) Southern Biscayne Bay, including Manatee Bay, Card Sound and Barnes Sound were also further evaluated. It was determined that neither MFL criteria nor a water reservation should be established at this time. Rather, we propose that appropriate water reservation(s) for this area will be appropriately scheduled and established as part of the CERP process, development of operational plans, and construction of facilities for the C-111 and CSOP projects.

Estero Bay MFL and Lower West Coast Aquifers MFL

Estero Bay was originally placed on the MFL Priority List based on concerns expressed by FDEP in 2000 about reduced river flows and associated saltwater intrusion. The District determined that it would be appropriate to link development of MFL criteria for the Estero Bay with the development of MFL criteria for the Lower West Coast surficial aquifer. A number of efforts by the District and other agencies have been initiated to provide improved resource protection in these areas. These include specific studies of resources in the Estero Bay estuary, development of associated performance measures to protect these resources, criteria for protection of isolated wetlands in the watershed, and the ongoing South Florida Feasibility Study. Some of the reasons why Estero Bay was removed from the list are noted below:

- Use of the surficial aquifer in this area is limited by proximity of the coastal salt water interface and low yield
- Groundwater also has a high concentration of iron
- Much of the area is developed; most of these demands are met by other, more abundant sources

- There are few existing users within 2 miles of the coastline
- Water use permitting criteria (“B List Rules and “no harm” criteria) are felt to provide adequate protection to prevent over-development of surface or groundwater resources.
- Review of the number and types of permits issued in this basin show that CUP withdrawal quantities are not a major problem – the primary concern is water quality.
- Water quality issues are being addressed both through FDEP’s impaired waters and TMDL program and a proposed Special Southwest Florida Basin Rule, under development by the District, to require additional water quality management requirements for new developments.

These ongoing activities suggest that the threats to groundwater and surface water resources, due to impacts of existing and immediate future consumptive use withdrawals, are less severe than originally perceived, and are less immediate than in other areas of the District. Therefore we propose to postpone development of additional resource protection criteria (water reservations or MFL criteria) for these areas. The needs will be reevaluated through the water supply planning process for possible inclusion on a future priority list.

Kissimmee River and Kissimmee Lakes

The Kissimmee River and lakes in the Kissimmee Basin were initially placed on the SWIM priority List in 1988 due to perceived water quality problems. In the early 1990s, the SWIM priority list and MFL list were merged. Initial modeling studies of this region, as described in the Kissimmee Basin Regional Water Supply Plan (SFWMD), indicated a potential threat to water levels in some lakes within the region by groundwater withdrawals. More recent work now suggests that this threat is not immediate or severe and that water levels in these lakes are not currently threatened by consumptive use withdrawals. The District will proceed with developing a Water Reservation for the Kissimmee River by 2008 in conjunction with ongoing restoration efforts, but proposes to postpone efforts to develop MFLs for the Kissimmee Basin lakes beyond the 2008 time frame, with the following additional considerations:

- Most of the lakes in the Kissimmee Basin, and the various sections of the Kissimmee River, are controlled by regulation schedules that prevent excessive lowering of water levels in these systems.
- There is very little, if any, direct consumptive water use withdrawal from these lakes, and current withdrawals from the adjacent surficial aquifer do not seem to directly impact the lake water levels.
- Groundwater use in the Kissimmee Basin is primarily from the Floridan Aquifer, which is not directly linked to the surficial aquifer system and hence to lake levels, throughout much of the region.
- A number of restoration efforts are underway within the Kissimmee Basin that are designed to provide long-term protection and management for these systems, including the ongoing Kissimmee River restoration and development of a Long Term

Management Plan for the Kissimmee Chain of Lakes. The data collection and modeling efforts associated with the Long Term Management Plan will provide a better basis and understanding for development of MFL criteria or water reservations, whichever tool(s) seem most appropriate. These efforts should be largely completed by 2008.

Lake Okeechobee MFL

The SFWMD developed MFL criteria for Lake Okeechobee in 2001. The MFL rule includes a mechanism and process for periodically reviewing and updating MFL criteria, and including revisions as part of the regional water supply process. Therefore, we see no need to identify this forthcoming update as a separate item on the MFL Priority List. The SFWMD is presently reviewing the operational plan and regulation schedules for Lake Okeechobee. A review of the effect of these changes on the existing MFL criteria will be conducted as a step in the analysis and, the MFL criteria will be modified in accordance with procedures outlined in Ch 40E-8 F.A.C. and Ch 373 F.S.

TRIBAL WATER RIGHTS AGREEMENT

AGREEMENT BETWEEN
THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT
AND THE SEMINOLE TRIBE OF FLORIDA
AND WATER SUPPLY PLAN FOR THE BRIGHTON RESERVATION
IMPLEMENTING SECTION VI.B. OF THE WATER RIGHTS
COMPACT AND SUBPARAGRAPH 3.3.3.2.A.3 OF THE CRITERIA MANUAL
(AGREEMENT NO. C-4121)

WHEREAS, the South Florida Water Management District (District) has entered into a Water Rights Compact (Compact) with the State of Florida and the Seminole Tribe of Florida (Tribe); and

WHEREAS, pursuant to Part VI., Section B of the Compact and subparagraph 3.3.3.2.A.3 of the Criteria Manual for the Compact, there is specific authority for the District to take actions to ensure that the Tribe receives the fifteen percent (15%) entitlement set forth in the Compact for the Brighton Reservation; and

WHEREAS, the District makes water supply releases from Lake Istokpoga to maintain the canals at or near optimum until such time as the level of Lake Istokpoga reaches the water supply minimum level as outlined in the regulation schedule for Lake Istokpoga, hereby attached and incorporated as Exhibit "A"; and

WHEREAS, historically, water shortages have been declared for Lake Istokpoga and the Indian Prairie Basin when Lake Istokpoga reaches the water supply level as outlined in the regulation schedule and the canals reach the minimum levels established in Rule 40E-22.072, Florida Administrative Code, hereby attached and incorporated as Exhibit "B"; and

WHEREAS, the District issued a preliminary report in December, 1988, which concluded that, at times, the lower reaches of the Indian Prairie Basin canals traversing the Seminole Brighton Reservation did not get a fair share of the discharge from Lake Istokpoga and/or run-off generated and that, for various reasons the fifteen percent (15%) minimum entitlement was not always available to the Reservation; and

WHEREAS, the preliminary report also determined that implementation plans would be developed employing specific strategies to assure maximum reliability in delivering the Tribe's fifteen percent (15%) share to the Reservation; and

WHEREAS, the District installed pumps on the C-41 and C-40 canals at S-71 and S-72, respectively, to provide additional water supply from Lake Okeechobee.

NOW, THEREFORE, the District and the Tribe hereby agree, in order to provide the Tribe with its entitled share of surface water for the Brighton Reservation, to implement the provisions of section VI.B. of the Compact and subparagraph 3.3.3.2.A.3 of the Criteria Manual by the following method:

1. No Declared Water Shortage

The District agrees to maintain the water in the C-41 and C-40 canals south of S-70 and S-75 at optimum levels provided that neither Lake Istokpoga nor Lake Okeechobee are in declared water shortages. Optimum levels shall be 19.2 feet mean sea level (msl) in the segment of the C-41 canal between S-70 and S-71 and 20.2 feet msl in the segment of the C-40 canal between S-75 and S-72.

2. Declared Water Shortage in Lake Istokpoga

If Lake Istokpoga is in a declared water shortage and Lake Okeechobee is not in a declared shortage, the District agrees to maintain the water in the C-41 and C-40 canals south of S-70 and S-75 at optimum levels unless and until a shortage is declared for Lake Okeechobee. In order to accomplish this, when Lake Istokpoga is at or below the water supply level of the regulation schedule, the District agrees to operate the pumps at S-71 and S-72 on the C-41 and C-40 canals.

3. Declared Water Shortage in Lake Okeechobee

If Lake Okeechobee is in a declared water shortage, the District agrees to maintain the water in the C-41 and C-40 canals south of S-70 and S-75 at optimum levels through releases from Lake Istokpoga unless and until a shortage is declared for Lake Istokpoga or until Lake Istokpoga reaches the water supply level of the regulation schedule.

- a. When sufficient water is not available in Lake Istokpoga to maintain water levels in these canals at optimum levels, the District agrees to operate the pumps at S-71 and S-72 on the C-41 and C-40 canals when Lake Okeechobee is at or above elevation 10 (ten) feet National Geodetic Vertical Datum (NGVD), or utilize available storage in District canals, to supply the minimum water amounts to which the Tribe is entitled under the Compact, as set forth in Table 7 of the December 1988 Technical Report entitled "A Technical Report on Water Availability Estimates for Brighton Reservation." Table 7 of this report is hereby attached and incorporated as Exhibit "C."

- b. The District shall use its best efforts to operate the pumps at S-71 and S-72 on the C-41 and C-40 canals when the level of Lake Okeechobee falls below 10 (ten) feet NGVD as long as mechanically possible without damaging the pumps, in order to provide the minimum amounts of water identified in Table 7 of the December 1988 Technical Report. The District cannot guarantee that the pumps will operate if the level of Lake Okeechobee falls below 10 (ten) feet NGVD.
- c. If in any given month the Tribe requests the District to withhold deliveries, in whole or in part, the District will not be responsible for delivery of the quantity of water withheld in a later month.

4. Reserved Lake Okeechobee Water

A sufficient volume of water from Lake Okeechobee, (See column 4 of Table 7 of the December 1988 Technical Report) shall be reserved and set aside in order to satisfy the District's obligations under section VI.B. of the Compact, as specified above in Sections 2 and 3 of this Agreement and Plan. This volume of water shall not be available for other users of water.

5. Education and Training

The District will provide Tribal representatives with appropriate training and education and necessary available data concerning the regulation schedules of both Lake Istokpoga and Lake Okeechobee.

6. Other Provisions

- a. This Agreement and Plan may be modified with the consent of the parties, and shall be reviewed as operational data becomes available concerning the mechanical operations for the pumps when the elevation of Lake Okeechobee falls below 10 (ten) feet NGVD.
- b. This Agreement and Plan is in full satisfaction of the District's obligations under subsections VI.B.1, 2 and 3 of the Compact and subsection 3.3.3.2 of the Manual.
- c. The Tribe warrants that approval of this Agreement and Plan by the Seminole Tribal Council will bind the Tribe to its terms and will provide the District with an opinion of counsel to that effect or, at the option of the Tribe, to obtain any approval by federal authorities that may be necessary.
- d. The District warrants that approval of this Agreement and Plan by the District's Governing Board will bind the District to its terms.

- e. This Agreement shall commence on the date of execution and continue in full force and effect until such time as it is terminated by the parties by mutual written consent.
- f. This Agreement shall be subject to the procedures established pursuant to Section VII F and VIII of the Water Rights Compact with respect to disputes and court actions.
- g. If it is subsequently determined by a federal court of competent jurisdiction that either of the approvals specified in subsections (c) and (d) of this section were not effective, then this Agreement and Plan shall be null and void.

Dated this 30th day of November, 1992.

SOUTH FLORIDA WATER MANAGEMENT DISTRICT,
BY ITS GOVERNING BOARD

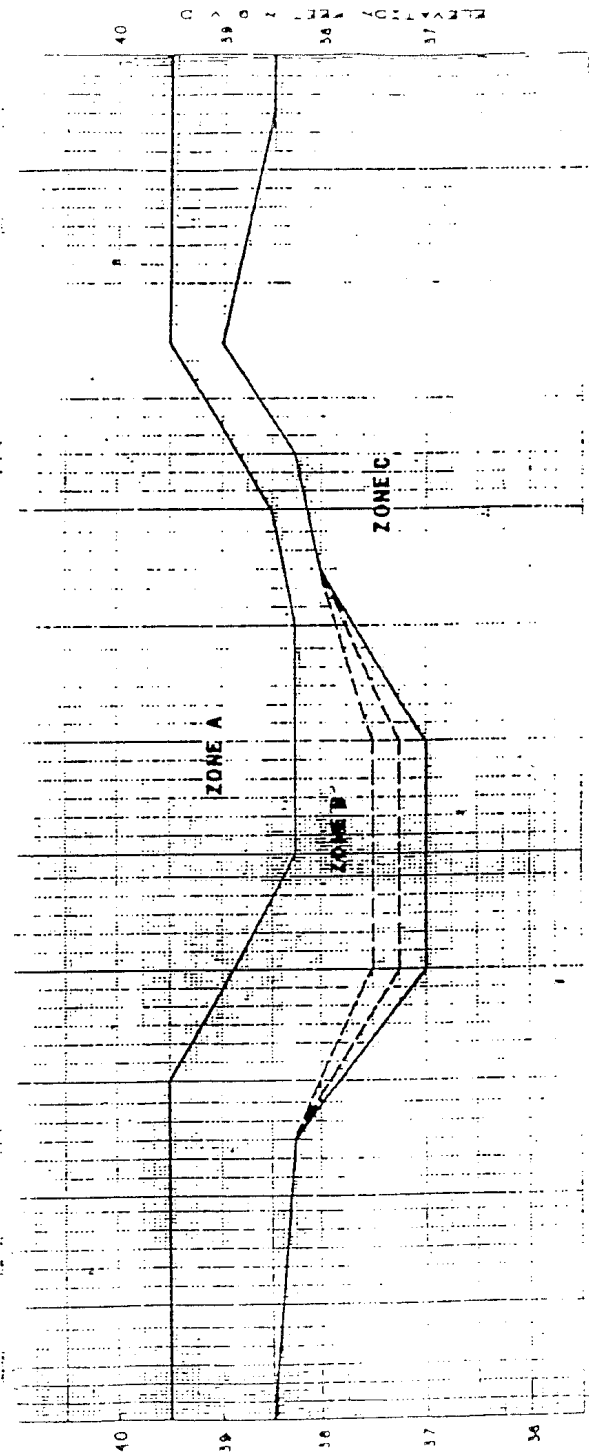
Legal Form Approved

By Thomas K. Wolf

By: Aaron Miller
Chairman

SEMINOLE TRIBE OF FLORIDA

By: [Signature]
Title: Chairman



SPECIAL CONDITIONS	
UPPER WATER SUPPLY LINE WILL BE USED FOR ZONE B AND C ONCE THE PROPOSED PUMPS ADJACENT TO B-71 AND B-78 ARE IN OPERATION BY LOCAL INTERESTS	
MIDDLE WATER SUPPLY LINE WILL BE USED ONCE THE PROPOSED PUMP ADJACENT TO B-71 IS IN OPERATION	
IT MIGHT BE NECESSARY TO DRAIN THE LAKE DOWN TO 37.0 FEET TO MAINTAIN THIS LEVEL WHEN NOT BEEN REACHED FOR AN EXTENDED PERIOD OF TIME.	

RELEASES	
REGULATORY RELEASES MADE THROUGHOUT ALL QUARTERS: 3-68 FIRM CAPACITY 3,000 CFS 5-68 SECONDARY CAPACITY UP TO 600 CFS OR TO 800 CFS INTERNAL CANAL CAPACITY UP TO 600 CFS	
WATER SUPPLY RELEASE MADE IF NEEDED	
NO RELEASES MADE	

PROPOSED 31 AUGUST 1988
COORDINATED 31 DECEMBER 1988

OFFICIAL AND SOUTHERN FLORIDA
RENEWABLE RIVER BASIN

REGULATION SCHEME
LAKE ISTOKP

40E-22.072 Minimum Levels.

The following minimum levels shall be maintained.

(1) Lake Istokpoga

(a) The minimum levels for Lake Istokpoga are shown in Figure 22-2.

(b) The District may, after public notice, allow the minimum levels in Figure 22-2 to be temporarily lowered for environmental or water quality reasons.

(2) Primary Canals (feet above mean sea level)

<u>CANAL</u>	<u>LEVEL</u>
(a) Canal 39-A above Structure 75	22.5
(b) Canal 40 above Structure 72	17.7
(c) Canal 41 above Structure 71	17.0
(d) Canal 41 above Structure 70	22.5
(e) Canal 41-A above Structure 84	21.7
(f) Canal 41-A above Structures 82 and 83	29.0
(g) Borrow Canal of Interceptor Levee 59	17.7
(h) Borrow Canal of Interceptor Levee 60	17.7
(i) Borrow Canal of Interceptor Levee 61	17.0

Specific Authority 373.044, 373.113 F.S.
Law Implemented 373.042, 373.086, 373.103(4) F.S.
History—New 9-3-81.
Formerly 16K-30.03, 16K-30.05, 40E-21.072.

EXHIBIT B

Table 7
Water Availability Estimates
(acre-feet)

Month	(1) Water Available in Lake Istokpoga	(2) Runoff Generated in the Basin	(3) Water Available to the basin (1) + (2)	(4) Presumptive Water Availability for the Reservation 15% of (3)
January	10,148	2,002	12,150	1,823
February	10,856	2,498	13,354	2,003
March	22,369	3,583	25,952	3,893
April	17,801	1,755	19,556	2,933
May	15,447	5,352	20,799	3,120
June	17,180	21,090	38,270	5,741
July	19,859	19,950	39,809	5,971
August	22,909	16,950	39,859	5,979
September	19,475	17,250	36,725	5,509
October	15,717	8,760	24,477	3,672
November	10,482	1,927	12,490	1,861
December	7,109	1,983	9,092	1,364

TRIBAL WATER RIGHTS COMPACT





WATER RIGHTS COMPACT
AMONG THE
SEMINOLE TRIBE OF FLORIDA,
THE STATE OF FLORIDA
AND
THE SOUTH FLORIDA
WATER MANAGEMENT DISTRICT

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**WATER RIGHTS COMPACT
AMONG THE SEMINOLE TRIBE OF FLORIDA,
THE STATE OF FLORIDA AND THE
SOUTH FLORIDA WATER MANAGEMENT DISTRICT**

WHEREAS, the parties to the Compact recognize the importance of tribal self-determination and economic development to the Tribe and the people of the State of Florida; and

WHEREAS, the parties to the Compact recognize the importance of protection of the environment and natural resources to the well being of all; and

WHEREAS, the parties to the Compact recognize that the general public interest is served by supporting the self-determination goals of the Tribe, by protecting and enhancing the environment, and by exercising prudence in the use of natural resources; and

WHEREAS, the parties to the Compact desire to protect the interests of all in available waters through cooperation and planning for present and future needs of the Tribe and others; and

WHEREAS, the Seminole Tribe of Florida claims paramount rights to the use of water under Federal law and freedom from State regulation; and

WHEREAS, the parties to the Compact disagree as to the scope and/or existence of the rights; and

WHEREAS, the regulation of consumptive water use and surface water management under Florida law within that portion of the State of Florida encompassing the Seminole Tribe's Federal

Reservations and Tribal Trust lands has been delegated by the State to the South Florida Water Management District; and

WHEREAS, the Seminole Tribe does not presently recognize the authority of the State or the District to regulate consumptive water use and surface water management on the Seminole Federal Reservations and Tribal Trust lands; and

WHEREAS, the parties to the Compact desire to avoid the expense and uncertainty of large scale water rights litigation; and

WHEREAS, the State and the District have recognized an obligation to assist the Tribe in the development of its Reservations by appropriate utilization of the waters on the Reservations so that the Tribe may become economically self-sufficient; and

WHEREAS, the Tribe has agreed to cooperate with the State and the District in the regulation of water use and water management; and

WHEREAS, the Compact is intended to create a comprehensive and effective system of regulation applicable to the Seminole federal Reservations and Tribal trust lands that protect the Tribe's water rights and development potential and is in harmony with the essential terms and principles of the State system; and

WHEREAS, this system would provide for the protection of surface and ground water within and outside of the Tribe's federal Reservations and Tribal Trust lands and prevent adverse environmental impacts; and

WHEREAS, the comprehensive system provides a procedural mechanism for resolving conflicts and establishes respective burdens of the Tribe, the State, the District, and other parties in fairly resolving water use and water management issues; and

WHEREAS, the Seminole Tribe has withdrawn its objections to the Modified Hendry County Plan pending approval before the United States Army Corps of Engineers in return for assurance that Tribal water rights will be protected under the Compact; and

WHEREAS, the Compact is not intended to disturb vested rights; and

WHEREAS, the State, the District, and the Tribe have agreed to cooperate and use their best efforts to identify the extent and quality of water resources available to the Tribe.

NOW, THEREFORE, the parties to the Compact agree as follows:

I. DEFINITIONS

The following terms as used in the Compact shall have the meaning assigned in this section, and shall not be understood as having the same meaning as terms defined by state law or by judicial interpretation of state law, unless otherwise expressly stated in the Compact.

- A. Action in Federal District Court Actions commenced in the United States District Court for the Southern District of Florida to enforce rights and obligations under the Compact.
- B. Board -- The Governing Board of the District with the general powers and duties set forth under Chapter 373, (1986 supp.) of the Florida Statutes, and its successors.
- C. District -- The South Florida Water Management District, an agency of the State of Florida created by Chapter 25270, Laws of Florida (1949) and operating pursuant to Chapter 373 Florida Statutes, and its successors.
- D. District Rules, Orders, and Regulations -- All lawfully promulgated rules, orders, and regulations adopted by the District or affecting the operations of the District.
- E. Essential Terms and Principles of the State System -- Non-procedural provisions of the Florida Water Resources Act of 1972 as presently codified in Chapter 373 of the Florida Statutes (supp. 1986) and which are necessary to provide for the beneficial use and management of water and related land resources; to promote the conservation, development, and proper utilization of surface and groundwater; to prevent damage from floods, soil erosion,

and excessive drainage; and to protect natural resources, fish, and wildlife.

- F. Florida Water Code -- The Florida Water Resources Act of 1972 as codified in Chapter 373 of the Florida Statutes (1986 supp.).
- G. Manual -- The Evaluation Criteria Manual approved by Tribe, State and the Board containing specific technical and procedural criteria.
- H. Reservations -- Lands designated by the United States Department of the Interior as of the effective date of the Compact, as federal Seminole Indian Reservations physically located within the geographic area under the authority of the District.
- I. State -- The State of Florida, its agencies (other than the District), political subdivisions, constitutional officers, officials of its agencies and subdivisions (other than officials of the District).
- J. Substantially Affected Third Persons -- Persons, groups, or entities who demonstrate a non-frivolous interest substantially affected by the exercise of rights under the Compact. The Florida Department of Environmental Regulation, the Florida Department of Natural Resources, the Florida Department of Community Affairs, and the Florida Game and Freshwater Fish Commission, successor agencies, and owners of lands within the basin affected by exercise of rights under the Compact are presumed to be substantially affected third parties. This presumption can be rebutted by an affirmative showing that the state agency or landowner does not have an interest that would be substantially affected by the exercise of rights under the Compact.

- K. Tribal Trust Lands -- Lands held in trust by the United States for the benefit of the Seminole Tribe, including the Immokolee lands held by the Tribe in fee status in Section 10, Township 47S, Range 29E, Collier County, Florida, as of the effective date of the Compact, and which are physically located within the geographic area under the authority of the District.
- L. Tribal Water Code -- A Code adopted by the Tribe which is consistent with the provisions of the Compact and which ensures compliance with the Compact by persons conducting activities on Reservation and Tribal Trust lands.
- M. Tribe -- The Seminole Tribe of Indians of Florida or the Seminole Tribe of Florida, a tribe of American Indians recognized by the United States and organized under section 16 of the Indian Reorganization Act of 1934, 25 U.S.C. section 476, and recognized by the State of Florida pursuant to Chapter 285, Florida Statutes.
- N. Wetlands -- Areas that are inundated by surface or groundwater with a frequency sufficient to support, and under normal circumstances do or would support, a prevalence of vegetative or aquatic life that require saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, wet prairies, river overflows, mud flats and natural ponds.
- O. Work Plan -- One or more work plans as described under Part VII., Section A. of the Compact.

II. GENERAL PROVISIONS

A. Obligations of the Tribe in Exercising Rights Under the Compact

1. The obligations of the Tribe in developing its reservations and Tribal Trust lands in exercising its rights under the Compact are limited to those expressly stated in the Compact, the Manual, or applicable federal laws. Nothing in the Compact is intended to divest the State of Florida of any jurisdiction it has as of the effective date of the Compact within the borders of the Seminole Reservations and Tribal Trust lands.
2. Those State laws and District rules, orders, and regulations which are applicable to the Tribe under the terms of the Compact as specified hereafter are expressly incorporated into federal law, and apply to the Tribe as federal law.
3. The Tribe may use any form of testing and monitoring to fulfill obligations under the Compact, if such testing and monitoring is reasonably equivalent to the accuracy and reliability of testing and monitoring customarily used or required by the District.
4. The Tribe shall give permission for the District to make on-the-ground inspections of Tribal facilities affected by the Compact, upon twenty-four (24) hour advance notice. Costs associated with such inspections shall be borne by the District.
5. Upon twenty-four (24) hour advance notice, the Tribe shall allow the District reasonable access to Reservation and Tribal Trust lands for the purpose of performing

testing necessary to fulfill the District's obligations under the Compact.

6. The Tribe is responsible for enforcing the provisions of the Compact, the Manual, and for complying with the terms and conditions of approved work plans on Reservation and Tribal Trust lands. The Tribe has the authority to promulgate a Tribal Water Code to implement and enforce the Compact, the Manual, and the terms and conditions of approved work plans.

B. Tribal Representative

All communication with the Tribe concerning rights and obligations under the Compact shall be through the Tribal office created for such purpose, or through such other party as is expressly designated by Tribal Council Resolution.

C. Notice

All notices provided for under the Compact shall consist of written communication by registered or certified mail to the addresses of the parties or as specified in the Manual. All notices, pleadings, or other materials required to be filed with the District Clerk shall be deemed filed on the date of actual receipt by the District Clerk. All other notices, pleadings or other materials shall be deemed filed upon mailing first class, postage prepaid.

D. Lands To Which Compact Rights Apply

This Compact, the Manual, the Tribal Water Code, and applicable federal laws constitute the sole sources of regulation of consumptive water use, and the management and storage of surface water and groundwater on Reservation and Tribal Trust lands.

E. Effective Date of Compact

This Compact among the Tribe, the State, and the District, shall not become final and shall be without binding force and effect until all requirements enumerated in section 2 of the Settlement Agreement between the parties to Seminole Tribe of Indians of Florida v. State of Florida, No. 78-6616-CIV (S.D. Fla) (to which the Compact will be attached as Exhibit C) have been satisfied. This Compact, in the form approved by the Board on May 15, 1987, shall be null and void on December 31, 1988 unless it has received all necessary approvals and/or ratifications by that date.

F. Inapplicability of Compact to Existing Facilities, Projects, and Improvements on Reservations and Tribal Trust Lands

1. Existing facilities, projects, and improvements, other than works of the District, which are located on Reservations or Tribal Trust lands, and which may be inconsistent with the criteria and standards set forth in the Compact, shall be required to meet the criteria and standards set forth in the Compact and the Manual only if:
 - a. the Tribe intends to integrate such existing facilities, projects and improvements into new developments under the Tribe's work plan when:
 - i) the additional flow to be routed to the existing facilities, when combined with current design flows, exceeds the design capacity of the existing facilities;
 - ii) the additional flow to be routed to the existing facilities will originate from areas of significantly different land use;

- iii) the existing facilities will be modified to accommodate the new water supply or water management development; or
 - b. such existing facilities, projects, and improvements substantially harm, or pose a threat of serious irreparable harm, to lands other than Reservation and Tribal Trust lands. Such existing facilities, projects, and improvements shall be required to meet the criteria and standards of the Compact only to the extent necessary to mitigate the demonstrated harm.
- 2. Such existing facilities, projects, and improvements which are located on Reservations and Tribal Trust Lands and which may be inconsistent with the criteria and standards set forth in the Compact shall not be required to meet the criteria and standards set forth in the Compact except in the circumstances set forth under subsection 1. of this section.
- 3. Notwithstanding any other provision of the Compact or Manual, the Tribe shall not be required to institute mandatory water utility pressure reductions during a declared water shortage on systems serving Big Cypress or Brighton Reservations.

G. Description of Numbering System for Compact

Letters and numbers designating provisions of the Compact shall be in the following order, and shall be identified in the following manner: "I" is a Part; "A." is a section; "1." is a subsection; "a." is a paragraph; and "i)" is a subparagraph.

H. Computation of Time

In computing any period of time prescribed or allowed under the Compact, the day of the act from which the designated period of time begins shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the periods shall run until the end of the next day which is not a Saturday, Sunday, or legal holiday. Legal holidays include those days so designated under State and federal law. The date of final District action under Part VII. of the Compact shall be the date on which the written order specified in Section I. of this Part is filed with the District Clerk.

I. Requirement for Written Orders / Final District Action

Any act or event which constitutes final District action under the Compact shall be reduced to a written order, filed with the District Clerk, and served on the Tribe within ten (10) days of such act or event. Service on other persons shall be as provided under Part VII. of the Compact.

J. Relationship Between Compact, Manual and Tribal Water Code

1. Provisions of the Compact listed in paragraphs a. through e. of this subsection shall be implemented according to the Manual:

- a. Part III.B.; III.C.6.; III.D.; and
- b. Part IV.; and
- c. Part V.A.; V.B.; V.C.; V.D.; and
- d. Part VI.B.; VI.D.; and
- e. All of Part VII.

2. If the Tribe complies with the applicable requirements and objectives of the Compact, then the Tribe, with the exception of the procedural chapter of the Manual, does not need to meet the specific criteria outlined in the Manual. If the Tribe satisfies the specific criteria outlined in the Manual, a presumption shall arise that the Tribe has met the requirements and objectives of the Compact.
3. Following the procedures set forth under Part VII.G. of the Compact, the parties to the Compact may modify, amend, or otherwise change the Manual.
4. One of the purposes of the Manual is to further define and explain the conditions, criteria and objectives of this Compact. Any ambiguities in the Compact should be resolved, if possible, by reference to the Manual. However, in no event, shall the Manual be used to alter or modify terms or provisions contained in the Compact which are not facially ambiguous. Conflicts between the Compact and the Manual shall be resolved by adhering to the Compact. Conflicts between provisions of the Tribal Water Code and the Compact shall be resolved by adhering to the Compact. Conflicts between provisions of the Tribal Water Code and the Manual shall be resolved by adhering to the Manual.
5. In any instance where the District establishes a new program of general applicability throughout the District or institutes changes in any rules, regulations, or procedures, which are of general applicability throughout the District, or institutes changes to rules,

regulations or procedures affecting only the basin or area within which Tribal lands to which the Compact applies, and which are inconsistent with or not addressed by the Compact or Manual:

- a. The District shall notify the Tribe of said changes in writing upon initiation by the District of rulemaking; and
- b. Within sixty (60) days of adoption the Tribe shall elect to proceed under either the new provision or under the prior provision if any. If the Tribe elects to proceed under the new provisions, the Manual shall be appropriately amended.

K. Promulgation and Amendment of Tribal Water Code

The Tribe shall provide the District with a copy of proposed provisions and proposed amendments of the Tribal Water Code at least ten (10) days before adoption by the Tribe of such provisions and amendments.

III. CONSUMPTIVE WATER USE

A. Protection and Regulation of Tribal Water Use

1. The principles set forth in this part of the Compact are intended to prescribe and protect the Tribe's rights to the use of water.
2. The Tribe's rights shall not be adversely affected or limited by any change subsequently made in the State system or the District rules, regulations, and orders affecting preference or priority of water use. The Tribe shall have a preference or priority equal to any preference or priority which may be established for the same use under State law for any other party after the effective date of the Compact.
3. After the effective date of the Compact the Tribe will have an opportunity for significant input into water related land use decisions on lands surrounding the Reservation. In return for this increased input from the Tribe, surrounding landowners should be able to rely on past land use decisions without fear that later exercise of tribal rights will negatively impact them. Present surrounding land uses do not present any inherent conflicts.
4. It is consistent with the public interest to take steps and means to avoid the undesirable effects of inflexibility in the transfer of water rights while retaining adequate security for any such existing rights. Water rights exercised under any existing system should not become so inflexible that water resources cannot meet new needs and demands by transfer from existing uses to new uses which are more beneficial.

B. General Criteria

The Tribe must give reasonable assurances that any proposed consumptive water use:

1. will not cause significant inland movement of either surface saline water or the underground saline water interface; will not cause either significant upconing of saline water that may be beneath freshwater or vertical leakage of connate saline water; or otherwise reduce the amount of potable water;
2. will not have a significant adverse impact on lawful land uses including wetlands located on lands other than Reservation and Tribal Trust lands;
3. will not cause significant adverse environmental impacts;
4. will not cause significant pollution of the surface water or the aquifer;
5. is a reasonable-beneficial use ;
6. will not interfere with presently existing legal uses of water and users of water protected under the Compact; and
7. is consistent with the essential terms and principles of the State system as defined in the Compact.

C. Competing Uses

1. The Tribe shall be given a preference in approval of Work Plans involving withdrawal and use of the

groundwater resources underlying Reservation and Tribal Trust lands.

- a. The Tribe shall be entitled to a preference when its proposed use conflicts with a proposed use by a non-Tribal user and the recognition of such preference is reasonably necessary to the accomplishment of the Tribe's lawful purposes.
 - b. The Tribe shall be entitled to a preference to a reasonable share of available resources when its proposed use conflicts with a then pending application by a non-Tribal user to renew or increase its authorized use of water and the recognition of such preference is reasonably necessary to the accomplishment of the Tribe's lawful purposes.
2. The Tribe through its exercise of rights under this Compact, is afforded an opportunity to perfect its rights to water as though it had been an existing user and had elected to perfect its rights to water on or after March 2, 1974 (the date of implementation of Part II, Chapter 373, Florida Statutes).
 3. If two (2) or more proposed uses which otherwise comply with the provisions of this part are pending for a quantity of water that is inadequate for both or all, such proposed competing uses must first satisfy the standard conditions for approval which apply to each applicant. The Board shall consider the reasonable beneficial uses for the water as well as the extent to which the proposed use is reasonably necessary for the Tribe to achieve its purposes.

4. No Tribal preference shall be asserted in a manner that will cause catastrophic changes to aquifer systems. No Tribal preference shall be asserted directly or indirectly for the purpose of exporting water for use offsite of Reservations and Tribal Trust lands.
5. Determination of any tribal claim that offsite activities or water consumption have caused water quality problems in aquifer systems underlying Reservation and Tribal Trust lands shall be made without regard to any preferred rights of the Tribe under this section.

6. Drawdown Limitations

This subsection specifies maximum drawdowns in artesian aquifers. Actual drawdowns permitted by the District pursuant to the Compact with respect to the Tribe or Chapter 373, Florida Statutes, with respect to adjacent landowners may be substantially less than these maximums.

a. Exercise of Tribal Preference

In exercising its preference rights, the Tribe shall not cause more than a twenty (20) foot drawdown of the potentiometric head of any artesian aquifer system at the boundaries of the Reservation or Tribal Trust lands involved unless it has specific written authority or agreement from affected landowners.

b. Adjacent Landowners

No development of groundwater resources on lands adjacent to any of the Seminole Reservations or Tribal Trust lands will be

permitted by the District if the drawdown of the potentiometric head of any artesian aquifer system will be more than twenty (20) feet at the boundary of the Reservation unless it has specific written authority or agreement from the Tribe.

7. All water use permits issued by the District after the date this Compact is approved by the Board to non-Tribal users whose permit rights may be affected by the Tribal rights confirmed under the Compact, shall include a special condition advising the permittee of the Compact and its potential impact on any future permit renewals. Appropriate notice of Tribal rights under the Compact shall be sent to all potentially affected holders of existing permits.
8. The Tribe shall mitigate adverse impacts on lawful single family home domestic users existing as of the date the Compact is approved by the Board, where such adverse impacts are caused by the exercise of Tribal rights under the Compact. Adverse impact shall be determined according to the Manual.

D. Water Shortage

1. Reductions in Tribal water use due to water shortages shall be made in the same manner and percentage as the equivalent class of use, source, and manner of withdrawal as required under the District water shortage plan. The Tribe may request a variance from water use restrictions imposed pursuant to this Section, using the procedures and criteria in the Manual. Variances shall not be unreasonably denied. The Tribe shall not be required to reduce its water sources, uses, and methods of withdrawal more than the reduction in sources, uses, and methods of withdrawal of the

least restricted user of the same source, use, and method of withdrawal class except as authorized under Chapter 7 of the Manual.

2. Declared water shortages occurring solely on Reservation and Tribal Trust lands shall be governed solely by the Tribal Water Code provided that the Tribal provisions satisfy the objectives of the District and that the applicable Tribal procedures are consistent with the Compact.

IV. MANAGEMENT AND STORAGE OF SURFACE WATERS

A. General Criteria

The Tribe must give reasonable assurances that the proposed surface water management system:

1. provides adequate flood protection and drainage;
2. will not cause significant adverse water quality and quantity impacts on receiving waters and non-Tribal lands;
3. will not cause discharges to ground or surface waters which result in any violation of State water quality standards;
4. will not cause significant adverse impacts on surface and groundwater levels and flows;
5. will not cause significant adverse environmental impacts;
6. can be effectively operated and maintained;
7. will not adversely affect public health and safety;
8. will not otherwise be harmful to the water resources of the District; and
9. is consistent with the essential terms and principles of the State system as defined in the Compact.

V. MISCELLANEOUS ENVIRONMENTAL**A. Water Well Construction**

The Tribe must give reasonable assurances that the construction, alteration, operation, maintenance, and abandonment of any water well on Reservation and Tribal Trust Lands will not be harmful to the water resources of the District and will not be inconsistent with the purposes of the Compact.

B. Underground Injection

1. The Tribe must give reasonable assurances that the construction, alteration, operation, maintenance, and abandonment of any underground injection facility will not be harmful to the water resources of the District and will not be inconsistent with the purposes of the Compact.
2. The District shall, independently of the federal authority having jurisdiction over the matter, review requests by the Tribe for installation and operation of underground injection systems in accordance with the provisions of the Manual.

C. Water Quality Criteria

Tribal activities shall not cause significant pollution of ground or surface waters. The Tribe shall comply with those water quality standards imposed by the District as provided in the Compact, the Manual, and with federal pesticides requirements on Reservation and Tribal Trust lands. The Tribe shall use only pesticides, herbicides, fertilizers, and other agricultural chemicals which have been approved by the Environmental Protection Agency and the U.S. Department of Agriculture for use in Florida and shall apply the pesticides, herbicides, fertilizers, and other agricultural chemicals in strict accordance with the

label directions. Upon written Tribal Council Resolution by the Tribe, the District shall condition permits or other requests for approval reasonably expected to affect Tribal interests by requiring adherence to those water quality standards imposed by the law. The District shall cooperate with the Tribe and appropriate State and federal agencies to enforce the requirements of this subsection against the use of pesticides, herbicides, fertilizers, and other agricultural chemicals by third persons on lands other than Reservation or Tribal Trust lands in a manner which causes water quality violations. The District's cooperation may include, but not be limited to, requiring reasonably appropriate monitoring by permittees and other appropriate actions authorized by state or federal law.

D. Wetlands Protection

1. The Tribe will provide reasonable assurances that wetland values and functions will be maintained. Wetlands and proposed impacts on wetlands shall be evaluated using sound engineering and ecological principles.
2. Wetlands greater than forty (40) acres, or covered under subsection 3. of this section, will be protected in accordance with the criteria set forth in the Manual.
3. Wetlands of forty (40) acres or less which are incorporated within a surface water management system or are otherwise protected, shall be governed by subsection 2. of this section.
4. Wetlands of forty (40) acres or less which are not incorporated within a surface water management system or are not otherwise protected, may be disturbed, provided that an upland system of equivalent size is set aside in an area committed for passive uses. The wetland and upland areas to be

traded shall be specifically described in any Work Plan proposed under Part VII., Section A. of the Compact. The District may waive the requirement for uplands set aside under such circumstance as would justify such a waiver for non-Tribal interests.

**VI. SPECIAL PROVISIONS APPLICABLE TO SPECIFIED RESERVATION
AND TRIBAL TRUST LANDS**

A. Landowner Agreements

The Tribe and any landowners who may be affected by operations of the Tribe under a tribal Work Plan, may be protected and governed by site specific criteria applicable to groundwater withdrawals and, if applicable, to surface water withdrawals, determined by private agreement, which may include provisions for arbitration. Criteria for groundwater withdrawals may apply to well placement, construction and operation. Similar criteria for surface withdrawal pumps or other works will be identified, if appropriate, to implement the purpose and intent of this subsection. Any such private agreement may be presented to the District for approval and if so approved by the Board the agreement shall have, as between the parties to such agreement, the force and effect of the Compact and, specifically, shall prevail in any dispute between the parties to such private agreement in the event of a conflict with the Compact, the Manual or with other applicable permitting criteria of the District. Nothing herein shall affect the authority of the District to evaluate Work Plans, permit applications, or other requests for approval under other provisions of the Compact or state law. Nothing herein shall be construed to preclude a third person from asserting that such Work Plan, permit application, or other request for approval adversely affects their substantial interests. The private agreement between the Tribe and United States Sugar Corporation entered into prior to May 15, 1987 is attached hereto as Exhibit A and made a part hereof. The private agreement between the Tribe and Lykes Bros., Inc. entered into prior to May 15, 1987 is attached hereto as Exhibit B and made a part hereof. Both private agreements are hereby approved.

B. Brighton Reservation

1. The Tribe shall be entitled to fifteen percent (15%) of the total amount of water which can be withdrawn from the District canals and from District borrow canals by all users from surface water within the Indian Prairie Basin as described in Rule 40E-21.691(6)(a), Florida Administrative Code (1987), (legal description to be corrected in Florida Administrative Code) calculated by the District on a monthly basis. The Tribe shall not be entitled to any preference to withdrawals in excess of fifteen percent (15%) from such District canals. The Tribe shall withdraw its fifteen percent (15%) share of the waters in the specified canals under procedures detailed in the Manual which, in the light of experience, are reasonably designed to assure the Tribe of the opportunity to make its entitled withdrawals on a monthly basis. Notwithstanding the provisions of the Manual, the Tribe shall have the opportunity to demonstrate that it is not receiving its entitled share of the waters in the specified canals because of the actions of the District or of some third party. The Tribe shall have the burden of proof on this issue and shall assert any such violations of the Compact under the provisions of Part VII. of the Compact and the Manual.
2. The Tribe shall have access to a fractional share of surface waters from Lake Okeechobee for use on the lands of the Reservation located within the Lakeshore Perimeter Basin as described in Rule 40E-21.691(3)(d), Florida Administrative Code (1987), for water use as it exists on the effective date of the Compact. Such fractional share shall be calculated from the ratio of the total area of the water supply service area as it exists on the effective date of the Compact to the total

land area of the Brighton Reservation within the Lakeshore Perimeter Basin for water use as it exists on the effective date of the Compact.

3. Expansion by the District of the geographical boundaries of the area receiving surface water from a specific source for water use purposes shall entitle the Tribe to a fractional share of any additional available water in the District canals and District borrow canals for use on the Brighton Reservation. Such fractional share shall be calculated from the ratio of the total land area of the Brighton Reservation within the expanded service area to the total land area of the expanded service area. This subsection, however, shall not serve to diminish the percentage of surface water of the Indian Prairie Basin which was available to the Tribe before the expansion of the service area, and which the Tribe may elect to retain pursuant to subsection 1. of this section.

C. Hollywood (Dania) Reservation

1. On the Hollywood (Dania) Reservation, the Tribe shall have the rights set forth under Part III. of the Compact, except that with respect to public water supply permittees of the District whose permits are approved as of the effective date of the Compact, the Tribe shall have no more than the rights accorded public water supply permittees of the District whose permits are approved as of the effective date of the Compact.
2. After receiving notice pursuant to the Manual of an application potentially affecting Tribal rights under the Compact, the Tribe may:

- a. Object to the application pursuant to the Manual; or
- b. Require the District, if the potentially competing use request is granted, to order the permittee to accept the Reservation as a bulk consumer of the permittee's system. The District shall adjust the permittee's allocation to include the additional water needs of the Tribe, if such needs are not included in the allocation granted. The District shall place a condition in the permittee's permit that the permittee must allow the Tribe to connect to the permittee's system and must charge the Tribe at a rate not to exceed the most favorable consumer rate charged to any consumer of the permittee's system. If the additional water needed to supply the Tribe cannot be withdrawn without causing significant adverse impacts, the District shall place a condition in the permit that the permittee must satisfy the reasonable-beneficial needs of the Tribe before satisfying the additional needs of non-Tribal users. It is understood that this procedure is not intended as a precedent for any other situation.

D. Big Cypress Reservation

The Tribe shall be entitled to withdraw from any surface water resources on the Big Cypress Reservation that percentage of the water available within the South Hendry County/L-28 Gap Water Use Basin as described in rule 40E-21.691(7)(c), Florida Administrative Code (1987), as the lands of the Big Cypress Reservation bear to the total land acreage within the basin.

VII. ADMINISTRATIVE PROCEDURES

A. Submission Approval and Amendment of Work Plans

The Tribe, before commencing any work that is covered by the provisions of this Compact, shall submit a work plan to the District, or, where required, an amendment to any work plan, under the procedures specified in the Manual. Such procedures shall give interested parties adequate notice of Tribal plans and an opportunity to be heard, in accordance with the timeframes set forth in the Manual. Such procedures shall also give the District staff sufficient information to properly evaluate the proposals in accordance with the criteria and principles contained in Parts I. through VI. of the Compact and in accordance with the detailed provisions of the Manual.

B. Implementation of Work Plans After District Action

Following District action, the Tribe may request the Board for a rehearing or shall give notice of its intent to implement the Work Plan as approved following final District action or implement the proposed Work Plan or amendment without complying with part or all of final District action in accordance with the timeframes and procedures set forth in the Manual. Initiation of federal court action by the District or third parties shall be in accordance with the timeframes set forth in Part VIII. of the Compact and the procedures contained in the Manual.

C. Dispute Resolution; Exhaustion of Administrative Remedies Before Court Action

The Tribe and the District shall use best efforts to resolve disputes concerning the enforcement of rights and obligations created by the Compact through informal meetings, mediation, arbitration or third party facilitation. Before commencing action, in accordance with the provisions of Part VIII. of the Compact in

the federal district court for violations of the Compact by any party to the Compact or third party, notice shall be given to the Tribe or the District, as the case may be, and remedies provided in the Manual shall be exhausted under procedures established in the Manual.

D. Tribal Water Code

The Tribe, through a Tribal water code, shall enforce the provisions of the Compact and the Manual and terms and conditions of approved Work Plans against persons conducting activities on Reservation and Tribal Trust Lands. Notwithstanding this provision, the Tribe may in individual cases through Tribal Council resolution request the District to enter Reservation and Tribal Trust Lands for the purpose of enforcing the provisions of the Compact against persons other than the Tribe conducting activities on Reservation or other Tribal Trust Lands in accordance with procedures established in the Manual.

E. Tribal Challenge to District Approval of Applications by Third Parties

If the Tribe perceives that permit applications or other requests for approval by third parties from the District would conflict with Tribal rights under the Compact, the Tribe shall give the District adequate notice and shall raise its objections with respect to such permit applications or other request for approval in accordance with the timeframes set forth in the Manual before challenging such permit applications or requests in federal district court. The District shall timely notify the Tribe by certified mail, return receipt requested of such permit applications or other requests for approval. The dated return receipt from the U.S. Postal Service shall be attached to the staff report or other proposed District action and shall be conclusive evidence that the Tribe has been properly noticed pursuant to this section. The District's failure to comply with this section shall not deprive the

Tribe of rights it would have been able to assert had the District complied with this section. In the case of third party permit applications where a request for administrative hearing is filed, the Tribe shall have thirty (30) days from the date of either filing of the request for hearing, or Board evaluation of a Tribal notice of objection, whichever occurs later to make one of the elections set forth in the Manual. If one of these elections is made, the Tribe may not file any action in federal district court until final District action has occurred. A court action filed under this paragraph must be filed within thirty (30) days of final District action. The Tribe shall not file any such action in federal district court until final District action has occurred.

F. Violations of the Compact, the Manual, or the Terms of any Approved Work Plan by the Tribe or the District

Any substantially affected third parties who are substantially affected by actions of the Tribe or the District which are perceived to be in violation of any of the provisions of the Compact, the Manual or the terms and conditions of any approved Work Plan shall have the right to challenge such actions in procedures established in the Compact and the Manual. Persons other than the State or the District with claims over which the Tribe has jurisdiction must exhaust Tribal remedies.

Substantially affected third persons may file a written complaint with the District Clerk alleging violation of the Compact, Manual or the term of any approved Work Plan. Upon receipt of a complaint, the District shall conduct an investigation and make a determination of its intended action in accordance with the procedures set forth in the Manual. The Complainant or Tribe may file a request for a hearing before the Board within fourteen (14) days of notice of the District's findings.

VIII. COURT ACTION

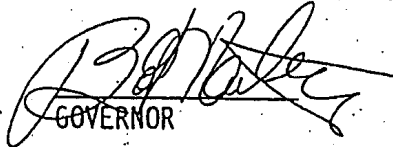
- A. The parties to the Compact will seek federal legislation giving the District Court for the Southern District of Florida original jurisdiction of all civil actions brought by or against the Seminole Tribe to enforce the Compact's provisions, including enforcement of agreements to arbitrate under the authority of the Compact.
- B. No action in federal district court shall be instituted under the Compact unless the party has complied with administrative procedures specified under Part VII. of the Compact and the Manual. Unless otherwise specified in the Compact, any action brought by any person who is not a party to the Compact shall be brought ex rel the District. A party proceeding ex rel may not challenge the validity of any final District action.
- C. In any action commenced under the Compact, a special master shall be appointed to report to the federal district court on questions of fact and law, unless the court makes a determination, in the exercise of sound judicial discretion, that use of a special master is not warranted. Actions under the Compact shall be decided on an expedited basis.
- D. Except for those persons having Tribal remedies, the judicial procedures specified in this part and the administrative procedures specified in Part VII. of the Compact shall be the exclusive procedures for resolution of any matter or dispute arising under the terms of the Compact or involving Tribal water use and any determination made under these procedures shall be final for all purposes, subject only to appeal from decisions of the federal district court presently allowed by federal law.

- E. In an action brought under the Compact for permanent injunctive relief or in any final determination on the merits, the substantially prevailing party shall be entitled to costs and attorney's fees.
- F. The Seminole Tribe of Florida, the State of Florida and the South Florida Water Management District expressly waive any immunity each may have to civil actions for injunctive relief commenced to enforce the Compact and its implementing federal legislation.
- G. The District or any person who timely requested a hearing or filed a notice of reliance, as set forth in the Manual, shall have thirty (30) days after the Tribe files notice of its intent with regard to the Work Plan, to commence suit in federal court. Such action shall not be ex rel the District. Persons who requested a hearing or filed a notice of reliance shall have an additional ten (10) days following expiration of the thirty (30) days to commence suit in federal court ex rel the District to enforce final District action.
- H. The Tribe may file suit in federal district court on a third party's permit within thirty (30) days of final District action.
- I.
 - 1. Any action filed in federal court shall deal separately with disputed issues of District procedure, interpretations of law, determinations of fact or policy within the District's exercise of delegated discretion. If the federal court determines that either the fairness of the proceeding or the correctness of the action may have been impaired by a material error in procedure or failure to follow prescribed procedure, then the federal court shall remand the case for further District action. If the federal court finds that the District erroneously interpreted a provision of law and that a correct interpretation compels a particular action, it

shall either set aside or modify the District action or remand the case to the District for further action under a correct interpretation of the provision of law.

2. This subsection applies when a formal hearing has been held pursuant to section 120.57, Florida Statutes (1985). If the District's action depends on any fact found by the District in a proceeding meeting the requirement of section 120.57, Florida Statutes, the federal court shall not substitute its judgment for that of the District as to the weight of the evidence on any disputed finding of fact. The federal court shall, however, set aside the District's action or remand the case to the District if it finds that the District's action depends on a finding of fact that is not supported by competent or substantial evidence in the record. The federal court shall remand the case to the District if it finds that the District exercise of discretion is either outside the range of discretion delegated to the District by law; inconsistent with a District rule; inconsistent with an officially stated District policy or prior District practice, if deviation therefrom is not explained by the District; or otherwise in violation of a constitutional or statutory provision. However, the federal court shall not substitute its judgment for that of the District on an issue of discretion. Such review shall not be de novo. Section 373.114, Florida Statutes (1985), shall not apply.
- J. No action in federal district court may be commenced until the Board has taken final District action, unless delay would cause irreparable injury and the relief requested is a temporary restraining order.

IN WITNESS WHEREOF, the parties hereto have affixed their hands and seals on the dates set forth below.


GOVERNOR

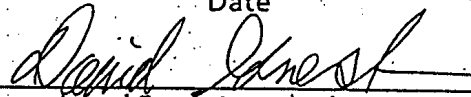
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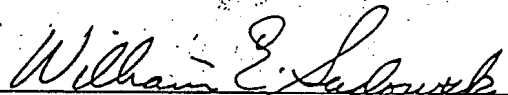
DATE


DEPARTMENT OF NATURAL RESOURCES


9/3/87

Date


Legal Form Approval


SOUTH FLORIDA WATER MANAGEMENT
DISTRICT

Date


Legal Form Approval

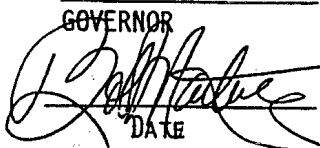

SEMINOLE TRIBE OF INDIANS OF FLORIDA

10-29-87

Date

Legal Form Approval

IN WITNESS WHEREOF, the parties hereto have affixed their hands and seals on the dates set forth below.

<u>GOVERNOR</u>  DATE	<u>Tom Landrum</u> DEPARTMENT OF NATURAL RESOURCES <u>9/3/87</u> Date <u>David Guest</u> Legal Form Approval <u>William E. Sedonish</u> SOUTH FLORIDA WATER MANAGEMENT DISTRICT <u>5/15/87</u> Date <u>[Signature]</u> Legal Form Approval <u>[Signature]</u> SEMINOLE TRIBE OF INDIANS OF FLORIDA _____ Date <u>[Signature]</u> Legal Form Approval
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Agreement Between the Seminole Tribe and United States Sugar Corporation
for Allocation of Water from the Lands of the Big Cypress Seminole Reser-
vation and the United States Sugar Corporation Lands Adjacent Thereto

WHEREAS, the UNITED STATES SUGAR CORPORATION (the "Corporation") owns certain lands adjacent to the Seminole Big Cypress Reservation (the "Reservation"); and

WHEREAS, the Corporation has received certain permits from the South Florida Water Management District for development of groundwater and surface water on these lands; and

WHEREAS, the Seminole Tribe (the "Tribe") has negotiated a water rights compact with the South Florida Water Management District and the State of Florida; and

WHEREAS, the Tribe and the Corporation are desirous of avoiding any controversy over these matters; and

WHEREAS, it appears possible to avoid any conflict between the Tribe and the Corporation by entering into a site specific agreement allocating the designated water resources; and

WHEREAS, the essential principles of an agreement have been agreed to by the Tribe and the Corporation; and

The Tribe and the Corporation agree as follows:

1. An area of land comprising Sections 31, 32, 33, 34, 35, 36, Township 47 South, Range 34 East and Sections 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, Township 48 South, Range 34 East of the Corporation's land and comprising certain lands owned by the Tribe which lands will be identified by August 15, 1987, will be identified as a Zone of Influence within which water withdrawals may have an impact on available water supplies beyond the boundary of each party's ownership (such lands together referred to herein as the "Zone of Influence"). If it is determined, based upon pump test data acquired by the Tribe and the Corporation that water withdrawals in or beyond this Zone of Influence will have impacts which are inconsistent with this Agreement, then

the party creating these impacts will mitigate them by limiting the amounts and methods of withdrawal within the Zone of Influence. For purposes of determining the maximum allowable withdrawals from the Zone of Influence, the entire general area suitable for agricultural development will be considered as a single agricultural development regardless of the timing of development by the Tribe and the Corporation. Within the Zone of Influence, water supplies will be allocated and amounts and methods of withdrawals authorized so that the Tribe and the Corporation accommodate and protect the water needs of each other and conduct economic activities without operational interference. Within the Zone of Influence neither party will utilize inefficient methods of withdrawal or use or otherwise consume water by wasteful means resulting in adverse impacts or limitations beyond the ownership of each party to the degree that adequate supplies become unavailable to the other. It is understood that the Tribe or the Corporation may use the water withdrawn anywhere for non-agricultural purposes although the amount of withdrawals will be limited to amounts normally allowed by the District as of the date of the Compact for agricultural uses on available acreages. For purposes of determining maximum allowable withdrawals, withdrawal needs shall be determined based upon agricultural uses to include, without limitation, citrus, other fruits, vegetables, and improved pasture. Agricultural uses assumed for purposes of withdrawal must be feasible based upon soils and other natural resource or climate limitations. The determination of withdrawal limitations and methods shall be based only upon the provisions of this Agreement and on any subsequent agreement or supplement hereto and not upon rights or priorities otherwise available under the Compact or under state or federal law.

2. In periods of drought or otherwise limited water supplies, the Tribe and the Corporation will be required to limit withdrawals of surface water or groundwater from the Zone of Influence, as

the case may be, so that available respective ground or surface supplies are shared equitably between them. The site specific abundance of water supplies available to the Tribe or the Corporation may allow a greater withdrawal of water by either so long as withdrawal from a particular supply does not inequitably limit the other.

3. In order to achieve agreed methods and amounts of withdrawal within the Zone of Influence of available water supplies as specified in Paragraphs 1 and 2 above, site specific ground water criteria for well placement, construction, pump type, pump depth and operation and criteria for surface water withdrawal works shall be established by a subsequent supplement to this Agreement. Identification of the Reservation lands comprising part of the Zone of Influence and site specific criteria described above shall be based upon pump test data acquired by the Corporation within its land and pump test data acquired by the Tribe within the Reservation. The Tribe shall perform a pump test in the general vicinity of the Northwest Quarter of Section 23, Township 48 South, Range 34 East, and acquire the data therefrom no later than August 15, 1987. In the event that the Tribe does not acquire data from the Reservation by August 15, 1987 then the Tribe's portion of the Zone of Influence and site specific criteria shall be based upon test data acquired by the Corporation from its land and other existing data, including data compiled by the South Florida Water Management District from test wells on Reservation lands. The Zone of Influence and specific criteria based upon this data will be modified, if necessary, based upon further data acquired by the Tribe from the Reservation, provided, however, that operational or construction modifications will not apply to wells or surface water works constructed in accord with the original criteria.
4. If operating experience in all or any portion of the Zone of Influence demonstrates that any specific operating criteria such

as withdrawal rates developed under this agreement for wells and withdrawal works are overly or underly restrictive and require modification by relaxing or increasing restrictions to achieve the intent and purpose of this Agreement, then such criteria may be modified by agreement.

5. In the event of failure to reach subsequent agreement required under Paragraphs 1 and 3, the matter shall be resolved by binding arbitration conducted by a panel of three technical experts applying the technical standards established by these paragraphs and any supplements to this Agreement and evaluating the data offered by either party for these purposes. If a subsequent agreement has not been reached within ninety days (90) after identifying data upon which determinations of the Zone of Influence and site specific criteria will be based, then arbitration shall commence on the request of either party. The Tribe and the Corporation shall each select one panel member and a third panel member shall be selected by the two panel members previously selected by the parties. Upon the failure of the two panel members to select a third, this panel member shall be appointed by the U. S. District Court for the Southern District of Florida ("The Court"). All determinations shall be made by majority vote of the panel members. The decision of the arbitration panel shall be made in writing at the time fixed by the panel or ordered by the Court. All expenses of the panel shall be paid equally by the parties. Upon application of a party, the Court shall vacate a decision of the panel that was procured by fraud, corruption or action which is beyond the powers of the panel. Alternatively, upon application made within sixty (60) days of a written decision, the Court may modify or correct a decision when there is an evident miscalculation of figures or mistake in the description of any thing or property referred to in the arbitration decision. Upon confirming or modifying a decision of the panel, the Court shall enter a judgment which may be enforced as any other judgment.

6. Any arbitration decision or subsequent agreements needed to complete or amend this Agreement shall not affect the authority of the District to evaluate work plans or permit applications under provisions of the Compact or state law or the rights of substantially affected third parties from participating in District proceedings.
7. This Agreement shall be effective as of the date of execution hereof and, upon the Compact becoming effective, shall remain in effect so long as the Compact is in existence. In the event the Compact is not approved or finally effective or held to be invalid, this Agreement will remain in effect and the Corporation and the Tribe shall make their best efforts to cause this Agreement to be binding and effective, including but not limited to, making efforts to obtain any required approval of any government agency or body.
8. The parties agree to share all data in their possession on the lands located within the Zone of Influence, including but not limited to, data from test wells. Neither will disclose data provided to any other private or public person or entity.

DATED this 15th day of May, 1987.

WITNESSES:

Opmer Billie-Mottlow

Jim Strane

WITNESSES:

W. Shile Carter

Ed Judy Goss

SEMINOLE TRIBE OF FLORIDA

By: James Shore, General Counsel

UNITED STATES SUGAR CORPORATION

By: John B. Boy, President

**Agreement Between the Seminole Tribe of Florida
and Lykes Bros., Inc. on Withdrawal of Groundwater
on the Brighton Reservation and the Lykes Bros.
Land Adjacent and Contiguous Thereto**

The parties to this Agreement, the Seminole Tribe of Florida (the "Tribe") and Lykes Bros., Inc. (the "Corporation"), made under authority of Part VI, Section A of the Water Rights Compact among the Seminole Tribe of Florida, the State of Florida and the South Florida Water Management District, agree as follows:

1. The determination, as between the parties, of limitations on groundwater withdrawals on the lands owned by the parties on May 15, 1987 within the Indian Prairie Basin as described in Rule 40E 21.691(6)(a) Florida Administrative Code (1987) shall be based upon the provisions of this Agreement and on any subsequent agreement between them and not upon rights, priorities or preferences otherwise available to the Tribe or the Corporation under the Compact or under State or Federal law, and neither party shall have standing to object to groundwater withdrawals made or proposed by the other on such lands, provided, however, that each party shall be bound by the rules set forth in section 3 of this Agreement for lands within the "well placement and set-back zone" defined below.

2. The lands of both parties in the following sections abutting the common boundary between the Tribe and the Corporation lands delineated on the map attached hereto, are designated

Exhibit B

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as the "well placement and setback zone" of groundwater withdrawals:

Sections 19, 30, 31, Township 38 South, Range 33 East; Sections 24, 25, 34, 35, 36, Township 38 South, Range 32 East; Sections 1, 2, 3, 4, 9, 10, 16, 17, 21, 22, 27, 28, 33 and 34, Township 39 South, Range 32 East; Sections 4, 5, 8, 9 and 16, Township 40 South, Range 32 East.

3. In the "well placement and setback zone" defined in Section 2 of this Agreement, the following rules will be observed in development of groundwater in the Floridan and Shallow Aquifers:

(a) Floridan Aquifer (greater than 150 feet)

1000 feet set-back from boundary,

no more than 2 wells per quarter section.

(b) Shallow Aquifer (less than 150 feet)

700 feet set-back from boundary,

no more than 4 wells per quarter section.

4. Any wells presently existing in the "well placement and setback zone" shall be exempt from the limitations imposed by Section 3 of this Agreement, provided that no new wells may be added in any quarter section if they would cause the total

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new and existing wells to exceed the limit defined in Section 3 in that quarter section. However, the parties agree to use best efforts to operate all presently existing wells in such manner as to minimize interference with the groundwater operations of the other party.

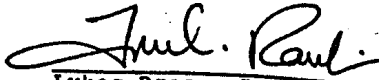
5. Construction of wells shall follow applicable District requirements, including but not limited to requirements as to casing.

6. This Agreement shall be retroactively effective as of May 15, 1987 and, as between the parties, shall have the force and effect of the Compact.

7. It is understood that this Agreement can have no force and effect until approved by the Governing Board of the South Florida Water Management District, adopted by the Seminole Tribal Council and until the Compact which authorizes it is finally approved by Congress. The parties agree that the Agreement must be submitted for approval in the form approved by the Governing Board on May 15, 1987, and that no change in the Agreement will be effective unless agreed to by both parties.

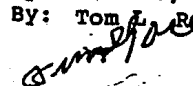
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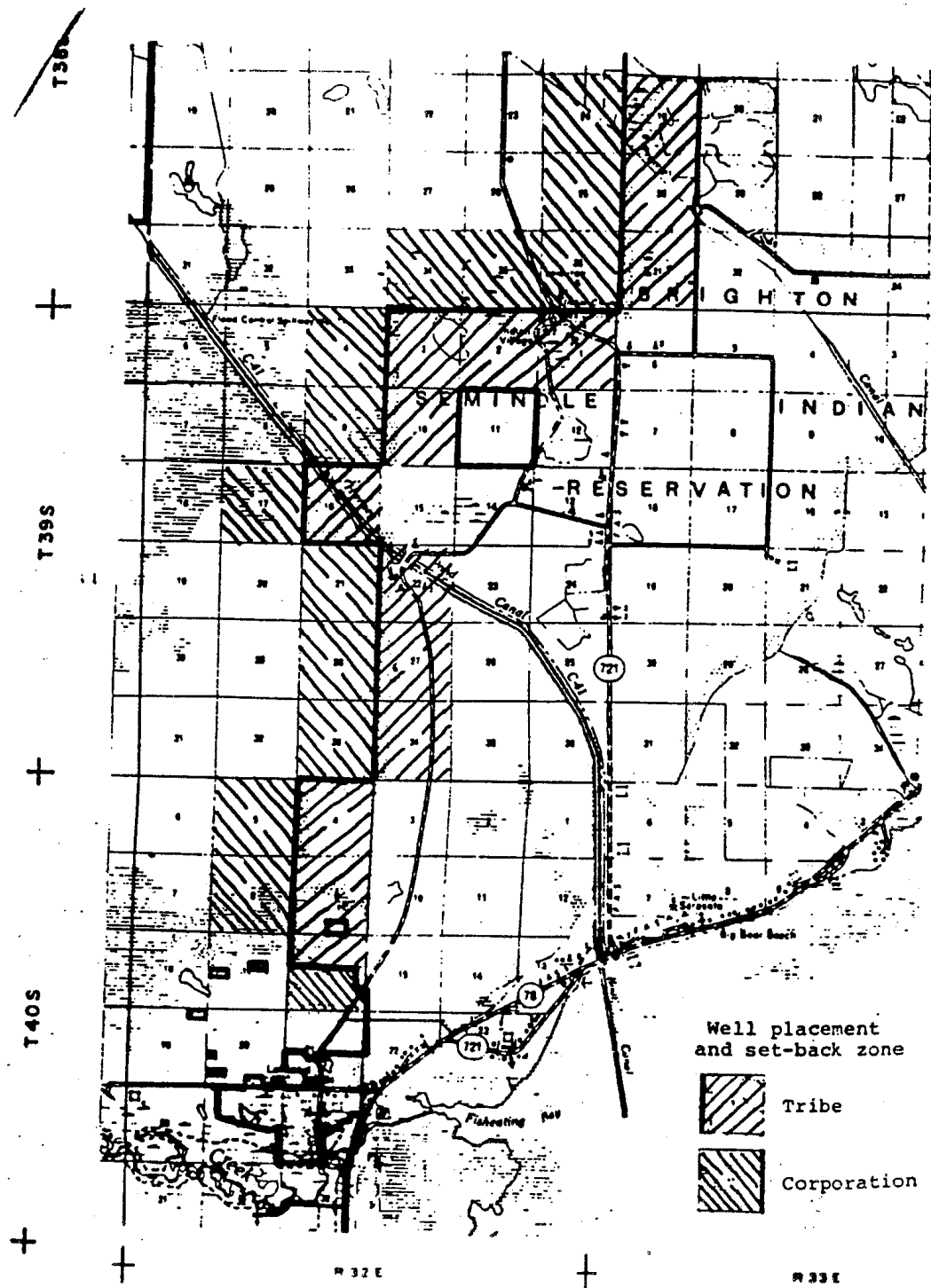
This Agreement will be null and void on December 31, 1988 unless it has received all necessary approvals and/or ratifications by that date.



Lykes Bros., Inc.

By: Tom L. Rankin, President



Seminole Tribe of FloridaBy: James Shore, Esq.
General Counsel



IN WITNESS WHEREOF, the parties hereto have affixed their hands and seals on the dates set forth below.

BOB MARTINEZ
GOVERNOR

DATE



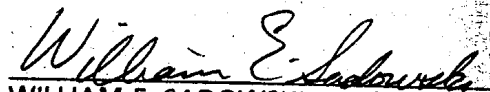
THOMAS E. GARDNER, as Executive Director
of the Department of Natural Resources on
behalf of the Department of Natural
resources and on behalf of the Board of
Trustees of the Internal Improvement Trust
Fund of the State of Florida.

9/3/07

Date

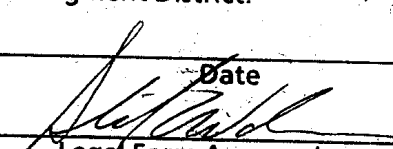


Legal Form Approval



WILLIAM E. SADOWSKI, as Chairman of the
Governing Board of the South Florida Water
Managment District.

Date



Legal Form Approval

JAMES BILLIE, as Chairman of the Seminole
Tribe of Indians of Florida.

Date

Legal Form Approval